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Supreme Court of the United States

OCTOBER TERM, 1964

No. 22

ALL STATES FREIGHT, INC., ET AL., APPELLANTS,

vs.

**NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY, ET AL.**

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT**

**FILED DECEMBER 31, 1963
PROBABLE JURISDICTION NOTED MARCH 30, 1964**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 719

ALL STATES FREIGHT, INC., ET AL., APPELLANTS,

vs.

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (RICHARD JOYCE SMITH, WILLIAM J. KIRK AND HARRY W. DORIGAN, TRUSTEES) ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE
COMMERCE COMMISSION, Defendants.

COMPLAINT TO SET ASIDE AND ANNUL AN ORDER OF THE
INTERSTATE COMMERCE COMMISSION—

Filed March 9, 1962

1. The plaintiffs herein are The New York, New Haven and Hartford Railroad Company (Richard Joyce Smith, William J. Kirk and Harry W. Dorigan, Trustees), a corporation of the State of Connecticut having its principal place of business in that state, and the other railroads named in Appendix A which is attached hereto and made a part hereof.

2. This complaint is brought under, and the jurisdiction of this Court is conferred by, the provisions of 49 U.S.C. § 17(9); 28 U.S.C. §§ 1336, 1398, 2284, 2321 to 2325; and 5 U.S.C. § 1009. It is a civil action to enjoin, set aside and annul the report and order of the Interstate Commerce Commission, hereinafter referred to as "the Commission", in a proceeding styled Investigation and Suspension Docket No. 7131, *All Commodities—From New England To Chicago And St. Louis*. The said report and order also embraced other proceedings¹ which had been

¹ The report and order also embraces No. 33185, *All Freight—Conn., Mass., R. I. to Chicago & St. Louis*; No. 33193, *Freight, All Kinds—Maine to Chicago & E. St. Louis, Ill.*; No. 33202, *All*

consolidated with the proceeding named above. A copy of the report and order is attached hereto and made a part hereof as Appendix B.

[fol. 2] 3. Plaintiffs were parties to the proceedings before the Commission which culminated in the report and order served on December 28, 1961, from which this appeal is made.

4. The sole protestant in the proceeding before the Commission is Eastern Central Motor Carriers Association, Inc., an association of motor carriers of freight. Certain individual members of the motor carrier association, hereinafter referred to as "Eastern Central", were subsequently permitted by the Commission to intervene in the proceeding then pending before the agency, and are identified as follows: All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking Line, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; The Western Express Company, and Wilson Freight Forwarding Company.

5. The provisions of 28 U.S.C. § 2322, require that actions to enforce, suspend, enjoin, annul, or set aside any order of the Interstate Commerce Commission shall be brought by or against the United States of America. By virtue of 28 U.S.C. § 2323, the Interstate Commerce Commission may intervene as of right in any such action. In recognition of the primary interest of the Commission in this action, plaintiffs have joined that agency as a defendant to avoid the need for its intervention.

6. In 1959, The New York, New Haven and Hartford Railroad Company, hereinafter referred to as "the New Haven", was faced with a serious competitive situation with respect to freight traffic from motor carriers and trailer-on-flat-car operations of neighboring rail carriers. Because of certain operating and financial disabilities, the

Freight Rates from New England to Ill., Ind., Mo.; and No. 33269, All Articles—from Windsor, Vt., to E. St. Louis, Ill., and St. Louis, Mo.

New Haven was unable to provide the quality of trailer-on-flat-car service needed to prevent the loss of its traffic. In these circumstances, the plaintiff, on February 12, 1959, issued schedules containing rates applicable on a mixed or straight shipment of manufactured articles when loaded into a single boxcar, which were designed to ameliorate, in some measure, the effect of its competitive disabilities. Similar rates were published by other plaintiffs, including The New York Central Railroad Company and the Boston and Maine Railroad. Still other plaintiffs participate in these rates schedules as connecting carriers.

[fol. 3] 7. After certain of the plaintiffs had filed tariffs containing these all commodity rates in accordance with the tariff publishing requirements, rules and regulations of the Commission, Eastern Central filed protests and petitions for suspension of the schedules. In response thereto the Commission entered orders suspending the said schedules and instituting investigations in Investigation and Suspension Docket No. 7131. Subsequently, the Commission in granting petitions of the New Haven and of certain shippers who had intervened in No. 7131, vacated the order of suspension, and permitted the rates therein to become effective on July 16, 1959, but proceeded with the investigation. Other plaintiffs filed similar rates thereafter, and these, although protested by Eastern Central, were permitted to become effective without suspension, but were made subject to formal investigation in the proceedings heard with No. 7131.

8. After hearings were held, the Commission, by its Division 2, served a report and order dated February 10, 1961, finding the rates in all of the related proceedings to be just and reasonable. The rates were specifically found not to result in destructive competition, and not in violation of section 1(6) of the Interstate Commerce Act which requires that just and reasonable classifications of freight be maintained.

Upon filing of a petition for reconsideration by Eastern Central, the entire Commission served a report and order, which is attached hereto as Appendix B, finding the rates

to be unjust and unreasonable in violation of section 1(6) of the Act.

Three Commissioners dissented.

9. The Commission's order is unlawful for the following reasons:

(1) It is not supported by necessary basic findings and such findings as the Commission has made are inadequate either to sustain its order or to disclose the underlying basis upon which said order is predicated.

(2) The findings and order are not supported by the evidence on the whole record.

[fol. 4] (3) In arriving at its order the Commission erroneously construed Section 1(6) of the Interstate Commerce Act (49 U.S.C. 1(6)) as requiring classifications of property over and above the classification that applies in connection with class rates.

(4) In arriving at its order the Commission erroneously construed Section 1(6) of the Interstate Commerce Act as requiring the condemnation of rates which it regarded as not giving controlling weight to the so-called "value of service" principle of rate making.

(5) In arriving at its order the Commission erroneously held that all-commodity freight rates either violate or do not violate Section 1(6) of the Interstate Commerce Act, depending on whether they are lower or higher than other carload rates applicable on individual commodities which may be transported under such all-commodity rates.

(6) The Commission's order was predicated, in part, upon a theory that the rates which it found unlawful would have a destructive effect upon just and reasonable rate structures necessary to the maintenance of an adequate National Transportation System. This theory is (a) not supported by the evidence, as to the matter of destructive effect with respect to the inherent advantages of the competing modes of

transportation or with respect to the questions of whether such unidentified rate structures as the Commission may have had in mind are just and reasonable; and (b) not supported by findings that such rate structures as the Commission may have had in mind are just and reasonable; that the rail carriers would not be benefited from a revenue standpoint with these rates in effect and what the extent of revenue loss, if any, [fol. 5] would be; that the rates would result in the destruction of certain inherent advantages of the carriers involved, what such advantages are and that the protection of such inherent advantages is necessary to the maintenance of an adequate National Transportation System.

(7) The Commission's order is unlawful in that it rests, in part, upon a theory that a classification is lawful or unlawful depending, not on the classification itself, but upon what rates are applied thereto.

(8) The Commission's order is unlawful in that, while recognizing that just and reasonable classifications for commodity rates may bear little, if any, resemblance to the classifications observed in orthodox class rate adjustments in determining the lawfulness of the proposed rates, it imposed the standards of orthodox classification principles used in connection with class rates and disregarded the evidence of special competitive factors which required the publication of the proposed rates.

(9) In arriving at its conclusion that the proposed rates are unjust and unreasonable, the Commission erroneously relied, in part, upon Section 3(1) of the Interstate Commerce Act (49 U.S.C. Section 3(1) and upon an erroneous construction of said section.

(10) The order is unlawful in that the Commission, contrary to the evidence and to its findings, failed here to give effect to its recognition that in carrier [fol. 6] competition situations, especially where unregulated competition is involved, a particular carrier or mode of carrier should not be required to forego

traffic by observing classification principles that are ignored by its competitors when the rate-making situation otherwise conforms to statutory rate-making standards.

(11) The Commission's finding (Appendix B, p. 10) that "For the reasons stated earlier in this report, the competitive conditions confronting the respondents herein do not justify a finding that these all-freight rates in the form here proposed are just and reasonable" is erroneous in that no such reasons were, in fact, stated, and for the further reason that the finding is not supported by substantial evidence on the whole record.

(12) The implied finding (Appendix B, p. 10) that the proposed rates represent a "scuttling, or serious impairment, of the main rate-making standards of the Interstate Commerce Act" is not supported by essential subsidiary findings or by substantial evidence.

(13) The implied finding (Appendix B, p. 11) that the proposed rates could not be approved without a change in the law by Congress is erroneous as a matter of law.

(14) The ultimate finding that the proposed rates are unjust and unreasonable is not supported by necessary basic findings or by substantial evidence on the whole record.

(15) The ultimate finding that the proposed rates are unjust and unreasonable is arbitrary and contrary to law.

Wherefore, plaintiffs respectfully pray:

(a) That as provided by 28 U.S.C. §§ 2284, 2321-2325 the Judge of this Court to whom this complaint is presented, notify the Chief Judge of the Circuit who shall [fol. 7] designate two other judges at least one of whom shall be a Circuit Judge to serve with said Judge as members of the Court to hear and determine this action.

(b) That this Court stay, restrain, and suspend the operation of the orders of the Interstate Commerce Commission dated December 28, 1961 and February 7, 1962, requiring cancellation of plaintiffs' rates on March 19, 1962, on one day's notice, pending the final hearing and determination of this action.

(c) That upon final hearing of this cause decree be entered permanently enjoining, setting aside and annulling the report and order of the Commission to the extent that it has found plaintiffs' rates to be unlawful.

(d) That the plaintiffs have such other and further relief as may be lawful and may be deemed by this Court to be fit and proper.

Respectfully submitted,

Thomas P. Hackett, Eugene E. Hunt, Attorneys for
Plaintiff Railroads, 54 Meadow Street, New Haven
6, Connecticut.

Edward A. Kaier, John A. Daily, Robert G. Bleakney,
Jr., Albert W. Laisy, Of Counsel.

Duly sworn to by Charles E. Ragland, jurat omitted in printing.

[fol. 8] Certificate of Service (omitted in printing).

APPENDIX "A" TO COMPLAINT

LIST OF PLAINTIFFS

In addition to The New York, New Haven and Hartford Railroad Company (Richard Joyce Smith, William J. Kirk and Harry W. Dorigan, Trustees), the following Railroads are also Plaintiffs:

The Baltimore and Ohio Railroad Company
Boston and Maine Railroad
Canadian National Railways
Canadian Pacific Railway Company
The Central Railroad Company of New Jersey
Central Vermont Railway, Inc.
Chicago & Eastern Illinois Railroad
Chicago, Milwaukee, St. Paul & Pacific Railroad
The Delaware and Hudson Railroad Corporation
Erie-Lackawanna Railroad
Grand Trunk Western Railroad
Lehigh and New England Railway Company
Lehigh Valley Railroad Company
Maine Central Railroad Company
New York Central System
The Pennsylvania Railroad Company
Reading Railway System
Western Maryland Railway

[fol. 10]

APPENDIX "B" TO COMPLAINT

SERVICE DATE JANUARY 15, 1962

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 7131¹

ALL COMMODITIES—FROM NEW ENGLAND TO
CHICAGO AND ST. LOUIS

Decided December 28, 1961.

Reduced all-freight rates, in straight or mixed shipments, from points in New England to Chicago and East St. Louis, Ill., Gibson and Hammond, Ind., and St. Louis, Mo., found unjust and unreasonable. Findings in prior report, 313 I.C.C. 275, reversed. Unlawful rates ordered canceled, and proceedings discontinued.

Appearances as shown in prior report, and, in addition: *Homer S. Carpenter* and *John S. Fessenden* for interveners in support of protestant.

REPORT OF THE COMMISSION ON RECONSIDERATION

HERRING, *Commissioner*:

In the prior report, 313 I.C.C. 275, Division 2 found that reduced boxcar rates² on all freight, with a few exceptions,³ in straight or mixed carloads, from points in New England territory to Chicago and East St. Louis, Ill., Gibson and

¹ This report embraces also No. 33185, All Freight—Conn., Mass., R. I. to Chicago & St. Louis; No. 33193, Freight, All Kinds—Maine to Chicago & E. St. Louis, Ill.; No. 33202, All-Freight Rates from New England to Ill., Ind., Mo.; and No. 33269, All Articles—From Windsor, Vt. to E. St. Louis, Ill., and St. Louis, Mo.

² Rates, charges and costs are stated per 100 pounds.

³ Perishable freight, livestock, military equipment, explosives, scientific equipment, and every commodity with a loss and damage

Hammond, Ind., and St. Louis, Mo., were just and reasonable. Ten individual motor carriers,⁴ members of the pro-[fol. 11] testant Eastern Central Motor Carriers Association, Inc. intervened in these proceedings in support of the protestant. Upon petition of the protestant and interveners, and reply thereto by the New York, New Haven and Hartford Railroad Company, referred to herein as the respondent or the New Haven, we reopened these proceedings for reconsideration on the record as made. The facts stated in the prior report will be repeated only where necessary for a clear understanding of the issues.

Division 2, acting as an Appellate Division, vacated the the order of suspension in the title proceeding, but continued the investigation. Since the schedules in the embraced proceedings were not suspended, all of the considered rates have become effective. Nevertheless, for convenience, they will sometimes be referred to herein as proposed rates.

The rates under investigation were published in section 2 of a tariff embodying all-freight boxcar rates. They alternate with the previously-established all-freight boxcar rates contained in section 1 of the tariff, depending on which produces the lowest charge. Section 1 rates apply only on mixed shipments of at least five commodities, with no one commodity exceeding 50 percent of the total consignment. The New Haven was the only respondent to present evidence in support of these rates. On brief, the respondents Boston and Maine Railroad, Maine Central Railroad Company, and The New York Central Railroad Company stated that their only reason for joining in these rates was to remain competitive with the New Haven.

expense in excess of 8.747 cents per 100 pounds as indicated in public statement No. 5-58, prepared by the Commission's Cost Finding Section.

⁴ All States Freight, Inc., Chicago Express, Inc., Eastern Express, Inc., Long Transportation Company, W. L. Mead, Inc., Ramus Trucking Line, Inc., Roadway Express, Inc., Spector Freight System, Inc., The Western Express Company, and Wilson Freight Forwarding Company intervened for the purpose of filing a joint petition for reconsideration with protestant Eastern Central Motor Carriers Association, Inc.

The proposed (section 2) rates are scaled to weight minima which range in 10,000-pound increments from 20,000 pounds to 70,000 pounds. They apply on service in boxcars [fol. 12] only, and no transit privileges requiring the use of more than one car per shipment are permitted. They exclude import-export or ex-water traffic, and the 20,000 and 30,000-pound rates are limited to movements in cars not exceeding 40 feet 7 inches in length. Representative rates from Boston to Chicago range from 213 cents, minimum 20,000 pounds, to 90 cents, minimum 70,000 pounds, and represent from 45 to 19 percent of first class. Since the proposed rates are not subject to a mixing rule, it appears that they represent the highest level at which the bulk of the New Haven's west-bound traffic would move.

The New Haven's stated purposes in establishing the section 2 rates are to attract and retain high grade tonnage which might otherwise move by truck and compete with plan III trailer-on-flatcar (TOFC) service. The plan III rates are published as charges per maximum consignment of 70,000 pounds, in no more than two trailers on one flat car. Under the TOFC rates, the shipper must furnish the trailers. However, these rates are subject to a mixing rule which requires that no one commodity may comprise more than 60 percent of the total shipment.

The respondent has been unable to compete effectively for the plan III traffic because of its general shortage of cars and because of physical clearance problems when handling high-cube trailers. Within two months after the establishment of the plan III service on July 21, 1958, the New Haven lost the equivalent of over 400 boxcar loads of this traffic to the New York Central. The New Haven subsequently improved its facilities so that at the time of the hearing herein it could participate in plan III service over its Maybrook gateway.

[fol. 13] A survey was made by the New Haven of all the traffic moving from origins on its lines at the section 2 rates to these destinations on and between July 16 and September 30, 1959. There were 364 shipments, 186 of which originated at Boston, Mass. The study shows the total revenues resulting from the section 2 rates, and what the revenues would have been had the traffic moved under the section 1

boxcar rates. The shipments were segregated into (a) traffic that previously moved in boxcars, (b) traffic that previously moved partly by rail and partly by other modes of transportation, and (c) traffic that previously moved by other than rail transportation, as indicated in the following table:

| <u>Group</u> | <u>Number of cars</u> | <u>Rated weight Pounds</u> | <u>Revenue</u> | <u>Average weight per car Pounds</u> | <u>Average Revenue per car</u> |
|------------------------------------|---------------------------|------------------------------------|----------------|--|--|
| <u>At section 2 proposed rates</u> | | | | | |
| (a) | 255 | 12,296,077 | \$144,709.86 | 48,220 | \$567.49 |
| (b) | 67 | 3,725,627 | 38,182.03 | 55,606 | 569.88 |
| (c) | 42 | 2,430,664 | 24,522.26 | 57,873 | 583.82 |
| Total | 364 | 18,452,368 | \$207,414.15 | 50,693 | \$569.82 |
| <u>At section 1 boxcar rates</u> | | | | | |
| (a) | 255 | 11,648,857 | \$178,529.42 | 45,682 | \$700.11 |
| (b) | 67 | 3,621,435 | 57,511.39 | 54,051 | 858.37 |
| (c) | 42 | 2,359,062 | 33,756.22 | 56,168 | 803.71 |
| Total | 364 | 17,629,354 | \$269,797.03 | 48,432 | \$741.20 |

The study shows also that 50 percent of the group (b) traffic formerly moved at the section 1 rates, and had it continued to do so, would have yielded \$28,755.69 in revenue. On the basis of these calculations, the traffic previously handled by the New Haven would have yielded, under the section 1 rates, total revenue of \$178,529.42 and \$28,755.69, or \$207,285.11, which is \$129 less than the total revenue of [fol. 14] \$207,414.15 under the section 2 rates from all of the 364 shipments. Thus, for this period, the respondent moved over 4 million pounds of additional traffic in return for \$129 in added revenue. This represents less than one-third of a cent in revenue for each additional 100 pounds of traffic moved.

The cost evidence of record, based on average eastern-district costs, indicates that the section 2 rates exceed the out-of-pocket costs, and in most instances make a substantial contribution to overhead. The findings in the prior report were based primarily on the apparent compensative-

ness of the proposed rates. It appears to us, however, that a more serious aspect of these proceedings and one which is of primary importance here, is the alleged violation of section 1(6) of the act and its effect upon the general rate structure.

Section 1(6), to the extent here pertinent, reads as follows:

It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, * * * and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

The New Haven asserts that this paragraph of the act was enacted to protect the shipper from abuses arising from a lack of competition. It is argued that there is justification for these section 2 rates, since commodity rates which are not based solely on the usual classification principles are lawful where the movement of traffic is frustrated at higher rate levels.

All-commodity rates.—Historically, all-commodity rates were first published in official territory in 1932. They reflected 70 percent of the first-class rates as prescribed in [fol. 15] *Eastern Class-Rate Investigation*, 164 I.C.C. 314, and subsequent reports, and were published to compete with container rates on less-than-carload traffic. The all-commodity rates were subject to a 30,000-pound minimum, while the minimum weight for a single container was only 4,000 pounds. Subsequently, additional all-commodity rates were established in and between most of the rate-making territories on the basis of from 40 to 70 percent of first class. In certain instances they went below 40 percent of first class, chiefly in order to meet TOFC competition. In August of 1949, the railroads in official territory established 50 percent of first class as the maximum basis for all-commodity rates because they were losing a considerable amount of forwarder traffic. Shortly thereafter, this basis was reduced to 45 percent.

Since 1932, numerous all-commodity or all-freight rail rates at varying percentages of first class have been established throughout the nation. Generally, however, they have applied on a limited number of commodities and require the mixing of two or more commodities. The primary purpose was and is to move less-than-carload traffic in carload quantities at a savings to both the carriers and the shippers. All-commodity rates in mixed carloads have usually reflected the average carload rate basis for the commodities covered, thereby adhering to, rather than departing from, classification principles by classifying a mixture of freight in carload quantities.

Discussion and conclusions.—As stated, the proposed rates apply on straight as well as mixed shipments, and on a vast number of commodities. The New Haven relies heavily on *All Freight to Pacific Coast*, 248 I.C.C. 73, where [fol. 16] in it was held that all-commodity rates on straight or mixed shipments did not violate section 1(6). However, in that proceeding, the all-commodity rates were no lower than the carload commodity rates which otherwise would have applied. In a few other proceedings we have approved all-commodity rates which were not limited to mixed shipments, but there again the all-commodity rates were at the same level, or higher, than the carload commodity rates.⁵ It is thus clear that approval of all-commodity rates in those proceedings did not represent approval of departures from the "classification" required by section 1(6) of the act. On the other hand, the application of all-commodity rates on shipments of single high-grade commodities were condemned in *Merchandise to and from Chicago*, 66 M.C.C. 287, and in *Freight, All Kinds, Kansas City, Mo.-Kans., to Nebraska*, 310 I.C.C. 321.

The maintenance of class rates is quite different from the "classification of property" required by section 1(6). While it was never intended that class rates must be applied on all traffic, the plain language of section 1(6) requires the maintenance of a classification of property with the establishment of rates related thereto. Exceptions rates

⁵ See also, *All Freight from Butte, Mont., to Spokane, Wash.*, 251 I.C.C. 291, and *All Freight from Chicago and St. Louis to Birmingham*, 226 I.C.C. 455.

and commodity rates do not represent departures from the classification of property because such rates are established on specific commodities or groups of commodities to meet particular transportation conditions. This is true also of classification rule 10 for mixed shipments, or variations thereof, moving at single rates and minimum weights, to [fol. 17] which all-freight and all-commodity rates are closely akin. While such rates ignore to some extent the individual commodity classifications, they are a necessary and established part of the national rate structure, and thus may appropriately be regarded as a reasonable separate category of classification, provided always that such rates are so restricted as not to undermine seriously any just and reasonable rate adjustment.

The rates here under investigation, however, apply not only on mixed but also on straight shipments of numerous commodities which would otherwise be subject to higher rates. Thousands of commodities are included in this sweeping adjustment without relation to classification principles, and without regard to the destructive effect which the proposed rates would have upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. If not restricted to reasonable mixtures, such rates could, and no doubt would, break down these rates structures to the detriment of carriers and shippers alike. The evidence is clear that such a result would follow approval of the proposed rates. In these circumstances, the rates must be condemned as constituting a destructive competitive practice in contravention of the national transportation policy, and also as in violation of section 1(6) of the act.

For purposes of clarification, we wish to emphasize that just and reasonable classifications for commodity rates may bear little, if any, resemblance to the classifications observed in orthodox class-rate adjustments, for the reason that commodity rates usually reflect material transportation circumstances and conditions, especially market and [fol. 18] carrier competition, which are not reflected in class-rate structures. We have in mind the necessity for variations in commodity-rate levels depending upon the character of the traffic and the circumstances affecting the transportation in particular situations.

Convincing proof that Congressional policy requires just and reasonable classifications of freight for all rate-making purposes—not just class rates—will be found in the Hoch-Smith Resolution, 49 U.S.C. 55, (adopted January 30, 1925, and still in effect) and in the analysis of that Resolution by the Supreme Court in *Ann Arbor R. Co. v. United States*, 281 U.S. 658. The second paragraph of that Resolution directed the Commission to investigate the rate structure to determine the extent and manner that existing rates and charges imposed undue burdens or gave undue advantage as between, among other things, “the various classes of traffic, and the various classes and kinds of commodities” In commenting on that paragraph of the Resolution, the Court referred to the substantive provisions therein which required consideration of (a) the general and comparative levels in market value “of the various classes and kinds of commodities” as indicated over a reasonable period of years, (b) a natural and proper development of the country as a whole, and (c) the maintenance of an adequate system of transportation. These matters, the Court emphasized, “have all been regarded as factors requiring consideration under existing laws.” The basic statutory standards of lawfulness are substantially the same today. Just and reasonable classifications of freight are also clearly contemplated by section 3(1), which prohibits undue preference or advantage to “any particular description of traffic, in any respect whatsoever.”

[fol. 19] It is true, of course, in carrier competitive situations, that a particular carrier or mode of carriage should not be required to forego traffic by observing classification principles that are ignored by its competitors, when the rate situation otherwise conforms to statutory rate-making standards. It is equally true that proprietary and exempt carriage presents a special problem in this area of rate making.

The present statutory rate-making standards in the act, particularly section 15a(3), are flexible enough to enable all regulated carriers and modes to maintain competitive rate adjustments, including the special situations resulting from proprietary and exempt carriage, provided such adjustments do not run counter to any of the basic standards

of lawfulness in the act. The Commission's recognition of this clearly appears from its past decisions, and currently. By basic standards of lawfulness we mean the standards of lawfulness in the act designed to protect the public interest in rate making, including especially those provisions which, since the inception of economic regulation, have required fair, just, and reasonable freight rates (for both carriers and shippers), and equality of treatment for people, commodities, and places, under substantially similar circumstances and conditions.

For the reasons stated earlier in this report, the competitive conditions confronting the respondents herein do not justify a finding that these all-freight rates in the form here proposed are just and reasonable. The hard problems presented by carrier competitive situations do not warrant the scuttling, or serious impairment, of the main rate-making standards of the Interstate Commerce Act. The approval of this present proposal as lawful, bearing [fol. 20] in mind its full implications, would in our judgment be a significant move in that direction.

This Commission, of course, has no authority to modify, enact, or nullify the Nation's transport laws. If all classifications must be disregarded with respect to all commodity and exceptions rates which move the great bulk of the Nation's commerce transported by regulated carriage, then Congress is the body that should be consulted in the matter.

Upon reconsideration, we find that the rates under investigation in these proceedings are unjust and unreasonable. An order will be entered requiring their cancellation and discontinuing the proceedings.

COMMISSIONER MCPHERSON, dissenting:

I would affirm the findings in the prior report.

COMMISSIONER WEBB, with whom COMMISSIONER TUCKER joins, dissenting:

This report is a retrogressive step in the history of rate regulation. Twenty years ago the Commission decided that all-commodity rates, not essentially different from those involved in these proceedings, did not violate section 1(6) of the Interstate Commerce Act. *All Freight*

to *Pacific Coast*, 248 I.C.C. 73.¹ At no time during the intervening period has the validity of that precedent been questioned by the Commission.²

The report of the Commission in *All Freight to Pacific Coast, supra*, was written by Commissioner Aitchison. His opinion for the majority, the concurring expression of Commissioner Eastman, and the dissenting expressions of [fol. 21] Commissioners Porter, Johnson, and Alldredge (with whom Commissioner Rogers joined) constitute an analysis of the basic problem which, in terms of penetration, lucidity, and forthright expression, is not likely to be surpassed. Although no such analysis is attempted in the report in these proceedings, it is clear that the majority has adopted the position unsuccessfully urged twenty years ago by Commissioner Alldredge.

The majority is correct in observing that the primary issue in these proceedings is the alleged violation of section 1(6) of the Act. At the outset, some striking similarities between the rates proposed here and those considered in *All Freight to Pacific Coast, supra*, deserve mention. There, as here, the all-commodity rates were clearly compensatory. There, as here, the all-commodity rates were designed to halt the diversion of rail traffic by rail-truck, motor common carrier, and private transportation. There, as here, the all-commodity rates were not subject to a mixing rule; applied only on shipments in one direction; did not apply on various commodities; and resulted in the movement of a large volume of freight which had moved on specific commodity rates lower than the class rates. And there, as here, the all-commodity rates were found to have produced an increase in volume of traffic which was largely offset by the lower all-commodity rate level. However, the majority does not find that the proposed rates

¹ On appeal, the Commission's decision was affirmed. *Pacific Inland Tariff Bureau v. United States*, 50 F. Supp. 376 (W.D. Wash., 1943).

² The two cases relied upon by the majority to support its conclusion, *Merchandise to and from Chicago*, 66 M.C.C. 287, and *Freight, All Kinds, Kansas City, Mo.-Kans., to Nebraska*, 310 I.C.C. 321, do not discuss section 1(6), its counterpart, section 216(b), or *All Freight to Pacific Coast, supra*.

would harm the New Haven's competitors without benefiting the carrier, probably because there is no indication that the traffic actually moved under the proposed rates would have moved under the rates which would be superseded. The majority's finding with respect to destructive competition appears to be based solely upon its conclusion that the proposed rates would break down just and reasonable rate structures because of their departure from classification principles.

[fol. 22] The only ground upon which the majority attempts to distinguish *All Freight to Pacific Coast*, *supra*, is that the all-commodity rates in that proceeding were no lower than the carload commodity rates which would otherwise have applied. So far as section 1(6) is concerned, that is a distinction without a difference. The respondents' carload commodity rates are just as foreign to the "classification" required by section 1(6) as their all-commodity rates.

The core of the majority's report is found in the following paragraph:

The maintenance of class rates is quite different from the "classification of property" required by section 1(6). While it was never intended that class rates must be applied on all traffic, the plain language of section 1(6) requires the maintenance of a classification of property with the establishment of rates related thereto. Exceptions rates and commodity rates do not represent departures from the classification of property because such rates are established on specific commodities or groups of commodities to meet particular transportation conditions. This is true also of classification rule 10 for mixed shipments, or variations thereof, moving at single rates and minimum weights, to which all-freight and all-commodity rates are closely akin. While such rates ignore to some extent the individual commodity classifications, they are a necessary and established part of the national rate structure, and thus may appropriately be regarded as a reasonable separate category of classification, provided always that such rates are so restricted as not to undermine seriously any just and reasonable rate adjustment.

What this means is that the classification requirement of section 1(6) of the Act applies not merely to class rates but to all rates—exceptions rates, commodity rates, classification rule 10 mixed shipments, and all-freight and all-commodity rates. The same broad interpretation of “classification” as used in section 1(6), was advanced by Commissioner Alldredge in his dissenting expression in *All Freight to Pacific Coast*, *supra* at 101:

[fol. 23] The significance of classification should be considered in its broadest sense, that is, as furnishing a comprehensive system for the distribution of the general rate burden and the establishment of rate relations, and, so regarded, it necessarily embraces commodity rates as well as so-called class rates.

These conclusions cannot be reconciled with those of the Commission in *All Freight to Pacific Coast*, *supra*. Speaking for the majority in that proceeding, Commissioner Aitchison observed at page 87:

The public is primarily interested in the charge for the service, irrespective of whether a rate is stated as a class or commodity rate. All rates are required to be just and reasonable, nondiscriminatory and non-prejudicial. To require carriers to maintain rates only on a classification basis would make section 1(6) paramount to all other sections of the act, particularly section 1(5), which requires all rates to be just and reasonable, * * *.

The majority concedes that just and reasonable classifications for commodity rates may bear little, if any, resemblance to the classifications observed in orthodox class-rate adjustments. Assuming, *arguendo*, that commodity rates and all-commodity rates constitute a “separate category of classification” within the meaning of section 1(6), it is obvious that the so-called classifications do not resemble the classifications which govern the application of class rates. All-commodity rates, for example, are made without regard to the value of the individual

articles transported and without regard to the classification ratings of the individual commodities. It is even more difficult to view a commodity rate on shoes from Point A to Point B as a "separate category of classification" within the purview of section 1(6). But even when commodity rates involve some grouping of commodities, such a grouping is different in kind from the classification envisioned by section 1(6).

[fol. 24] Apparently, the common denominator underlying the majority's all-inclusive interpretation of "classification" is a requirement that all rates must reflect, or at least must not offend, the value-of-service theory of rate-making. The rationale of the report is the same as that expressed in the above-quoted statement of Commissioner Alldredge.

The majority's conclusion that all rates are governed by the classification requirement of section 1(6) is contrary to the fundamental principles of ratemaking which this Commission has recognized during the last twenty years. For example, Commissioner Eastman in *All Freight to Pacific Coast*, *supra* at 89, made the following observations which he described as "elementary" and which he said "will enlighten no student of transportation charges":

I think that the extent to which the weight given to value has made possible the publication of low rates for low-grade freight has been exaggerated, for often these low rates, by reason of low cost of service, are very remunerative. However, there is no doubt that it has made the rates on many commodities considerably higher than cost of service alone could have justified. And this is a fact which has nourished the competition which the railroads have encountered as motor transportation has developed. Such competition has in recent years brought about wholesale reductions in railroad rates which has been elevated in the past by the weight given to the element of value.

What Commissioner Eastman regards as elementary when the winds of competition were rising is even more elementary today when those winds have reached hurri-

came force. The legislative and historical background of section 1(6) leaves no doubt that the requirement of classification was intended to reinforce the Commission's power to establish maximum reasonable rates but not to prohibit or restrain competitively compelled departures from the classification.

[fol. 25] Even before the enactment in 1887 of the Act to Regulate Commerce, the railroads maintained classifications of property. Even then the ratings were based primarily on the value of the service. Not until the enactment of the Mann-Elkins Act of June 18, 1910, however, were the carriers expressly required to make or observe a classification of property. Although the Commission, prior to 1910, had no specific authority to prescribe classifications of property, the power was exercised from the beginning of regulation because it was deemed essential to the effective exercise of its specific powers over rates. The nature of the implied power asserted by the Commission was described as follows on page 31 of its First Annual Report to the Congress:

It was, therefore, seen not to be unjust to apportion the whole cost of service among all the articles transported, upon a basis that should consider the relative value of the service more than the relative cost of carriage. Such method of apportionment would be best for the country, because it would enlarge commerce and extend communication; it would be best for the railroads, because it would build up a large business, and it would not be unjust to property owners, who would thus be made to pay in some proportion to benefit received. Such a system of rate-making would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it.

In its Eighth Annual Report to the Congress, the Commission observed that "classification is the foundation of rate-making." By "classification" the Commission meant that rates should reflect to a large extent the value of the

article transported, that is, that rates should be adjusted on principles analogous to those on which taxes are assessed. Despite the reservations later expressed concerning this method of ratemaking, there is no doubt that it was a practical method so long as the railroads held a virtual monopoly on transportation services.

[fol. 26] It is clear that when the Congress enacted section 1(6) in 1910, it merely confirmed a power which the Commission had asserted under Act to Regulate Commerce of 1887. The legislative history of section 1(6) shows that the express statutory requirement of a just and reasonable classification was intended to supplement the Commission's power to prevent excessive transportation charges. For example, the remarks of Representative Russell on H.R. 17536 were reported as follows:

Another very beneficial provision of the law is one providing that the railway companies shall establish and enforce just and reasonable regulations concerning the rates and tariffs.

I am not familiar with railway practices or rate sheets, or things of that kind, but I was told by a member of this House who has familiarity with them, a few days ago, that the shipper can be extorted from; he can be made to pay an unjust rate just as well through classification as he can through the fixing of a rate. The carriers can put an article in one classification, subject to a given rate, and if the I. C. C. sees fit to declare that rate unreasonable, and reduce it, declaring what shall be a reasonable rate to take its place, the carrying corporation can obtain the same benefit and put the shipper under the same disadvantage by simply changing the classification of the article.³

The Congress recognized, therefore, that the classification serves as a basis for the establishment of maximum reasonable rates and that value of service, in the sense

³ 45 Cong. Rec. 5142 (1910).

used by the Commission prior to 1910, was the foremost consideration in establishing classification rates and ratings. For some years after 1910, the railroad monopoly was such that it was still possible for railroads to transport a substantial volume of freight on classification rates. [fol. 27] And so long as railroads enjoyed even a semi-monopolistic position, the classification required by section 1(6) could be regarded as the foundation of ratemaking. The change was gradual. By 1939, however, transportation conditions had changed so materially that the Commission observed at pages 26 and 27 of its 53rd Annual Report:

The fact that in many instances railroad freight rates have been considerably higher than cost of service would justify has obviously afforded better opportunities for competition than would otherwise have existed, and the trucks and water lines have not been slow in availing themselves of these opportunities.

* * *

It will be seen that the competition of today has been and is cutting the props from under the old railroad rate structure and the principles, if such they can be called, upon which it was based. The trucks have been eating into the remunerative short-haul traffic and into the highly profitable carload traffic in high-grade commodities which load well, and the water carriers and the pipelines have been taking their toll of much long-haul traffic. * * * Because of the competitive reductions, the railroad rate structure has come to be full of apparent distortions and inconsistencies, and has grown more complex.

In Docket 28300, *Class Rate Investigation*, 1939, 262 I.C.C. 447, the Commission found that only 5.8 percent of the carload traffic moved on class rates within Official territory. In my judgment, the statutory requirement for just and reasonable classification is satisfied even though only a small portion of the total traffic moves on such rates. In other words, the requirements of section 1(6) are satisfied if a carrier maintains a classification as a com-

pendium of maximum reasonable rates. The decision of the Supreme Court in *Ann Arbor R. Co. v. United States*, 281 U.S. 658 (1930) does not require a contrary conclusion. In the first place, that case arose during the transition from value-of-service pricing to cost-oriented methods of [fol. 28] pricing. Secondly, the Commission's view that the Hoch-Smith Resolution was a rule intended to control rate-making was repudiated by the Court. As a result, the *Ann Arbor* decision was widely regarded as virtually a nullification of the Resolution. See Locklin, *Economics of Transportation*, 240 (5th ed. 1960).

The Commission did not hold in *All Freight to Pacific Coast, supra*, that section 1(6) is legally extinct. Only the Congress is empowered to modify or repeal provisions of the Act. On the contrary, at the very beginning of the discussion and conclusions in *All Freight to Pacific Coast, supra* at 86, Commissioner Aitchinson pointed out:

Respondents now maintain a full line of class rates governed by the western classification from and to all of the points involved in this proceeding, as required by section 1(6) of the Interstate Commerce Act.

Recently, in Docket No. 32533, *Eastern Central Motor Carriers Ass'n., Inc. v. Baltimore & Ohio R. Co.*, 314 I.C.C. 5, 49, the Commission found: "The railroads maintain a uniform classification of property, and consistent with the conclusions previously cited,⁴ we find that the assailed rates and charges do not constitute a failure to provide a just and reasonable classification under section 1(6) of the act." It cannot be denied that the respondents in these proceedings maintain a complete and uniform classification of property and a full line of class rates.

[fol. 29] Since the majority's conclusion is basically indistinguishable from that reached by Commissioner All-dredge in *All Freight to Pacific Coast, supra*, it may be helpful to analyze his dissenting expression in the light

⁴ *All Freight to Pacific Coast, supra*, and *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623, 631.

of subsequent events.⁵ Commissioner Alldredge's fundamental objection to all-commodity rates was that they violated the value-of-service theory of ratemaking which, in his opinion, the Commission was bound to respect both for economic reasons and in compliance with the intent of the Congress. Commissioner Alldredge's objections to all-commodity rates may best be summarized in his own words in *All Freight to Pacific Coast*, *supra* at 102:

Basic objections, therefore, to all-commodity rates are:

3. Though such rates may have only a special and limited use, they must nevertheless be incorporated into a *general rate structure constructed upon classification principles*, thus creating incongruities, maladjustments, and a general lack of harmony that inevitably must lead to violations of the antidiscrimination provisions of the law. (Emphasis added.)

4. The general use of rates of this character, if it should be brought about, may be expected to have a disastrous effect upon the revenues of all transportation agencies. The application of one level of rates to all commodities without distinction as to value or other transportation characteristics is bound to reduce revenues by discouraging, hampering, and restricting the movement of the lower-grade commodities, and by sacrificing unnecessarily revenue on high-grade commodities. To reiterate, it is rudimentary that some articles, by their very nature, will stand a higher transportation charge than others. * * *

⁵ Commissioner Alldredge's antipathy toward all-commodity rates is shown in his dissenting expressions in *All Freight Between Harlem River, N.Y., and Boston*, 234 I.C.C. 673; *All Freight, Chicago and St. Louis to Santa Rosa, N. Mex.*, 243 I.C.C. 517, and *All Freight Between Los Angeles and Albuquerque*, 28 M.C.C. 161. Of particular interest is the report of Division 3 in which Commissioner Johnson, joined by Commissioner Alldredge, stated the case against all-commodity rates with great clarity and vigor. *All Freight from Eastern Ports to the South*, 245 I.C.C. 207. Upon reconsideration, however, following *All Freight to Pacific Coast*, *supra*, the case was disposed of on other grounds, 251 I.C.C. 361.

[fol. 30] Today, the traditional concept of value-of-service pricing should not be regarded as an important factor in making rates. A distribution of the transportation burden among articles of commerce according to their value was reasonable in an era of monopoly but to require any such distribution today, except within very narrow limits, is unrealistic. Reduction of rates to meet widespread competition compels departure from ancient value-of-service principles. To conclude otherwise is to attribute to the Congress an intent to require the maintenance of classifications that would defeat the needs of commerce. Section 1(6) was intended to protect shippers from abuses arising from a lack of competition. Rates and ratings based on the classification may still be essential in fixing a ceiling on transportation charges, but where strong competition exists, other rates not based on the classification and not reflecting the value-of-service theory are essential to move the traffic involved. Motor common carriers are also aware of these economic facts of life. An examination of tariffs on file with the Commission will show that motor carriers are making extensive use of all-commodity rates not essentially different from those involved in these proceedings.

In recent months the Commission has warned the Congress and the general public concerning the decline of common carriage and the tremendous increase in the volume of traffic moving in unregulated channels of commerce. Appropriate legislative remedies have been suggested. A major element in the threat to common carriage is that the proprietary carrier is completely unaffected by classification principles. Value of service, as viewed by many shippers, is merely the value of common carrier service when compared with the cost of private transportation with [fol. 31] whatever allowance is appropriate for differences in quality of service. Any program to cure the ailments of common carriers, coupled with a policy to tie rates to antiquated value-of-service theories, holds a promise to the ear which will be broken to the hope.

Two propositions form the cornerstone of Commissioner Alldredge's dissenting expression in *All Freight to Pacific Coast*, *supra*. The first is that "a general rate structure

constructed upon classification principles" actually exists, and the second is that such a structure must be preserved in the interest of preventing violations of the antidiscrimination provisions of the Act. The first proposition is less true today than it was twenty years ago while the second is just as invalid today as it was then. In the instant proceedings, the majority, in my opinion, has endorsed both propositions, as evidenced by the emphasis placed upon the necessity of preserving what is described as a just and reasonable national rate structure.

Generalizations regarding a matter so complex as the overall transportation rate structure are apt to be dangerous over-simplifications. Rate structures, so-called, are being shaped and reshaped to a progressively increasing extent by the impersonal forces of competition and to a progressively decreasing extent by the personal judgment of Commissioners. To the extent that our national rate structure, so-called, has been molded by fair competition, I am satisfied that it is just and reasonable. This conclusion is based on my conviction that the impersonal judgment of the transportation marketplace can be relied upon to produce a national rate structure, so-called, that is far more just and reasonable than any product of economic planning.

[fol. 32] Nevertheless, there is a factor which imparts rigidity to the national rate structure and that is the extent to which the structure is based on classification principles with value of service as the dominant element. To the extent that our national rate structure is constructed upon value-of-service considerations (except for the purpose of establishing maximum reasonable rates), it is, in my opinion, inherently unjust and unreasonable. Value-of-service pricing in transportation was initiated by railroad monopolists for the purpose of maximizing profits by discriminating against shippers of manufactured products. This system of price discrimination was accepted by the Commission in the early years of regulation because it furthered the nation's general economic policy for developing the continent. In effect, shippers of high-valued commodities along the eastern seaboard were compelled to finance the extension of rail lines into the hinterland and thereafter to subsidize the less prosperous shippers who settled there.

See Meyer, Peck, Stenason, Zwick, *The Economics of Competition in the Transportation Industries*, 179 (1958). Needless to say, the historical purpose of value-of-service rates was fulfilled many years ago.

In *New York, N.H. & H.R. Co. v. United States*, Civil Action No. 8679, D. Conn., Nov. 15, 1961, the court recognized that value-of-service ratemaking is "a price-discrimination device, used either to maximize profit or to subsidize certain interests." Nevertheless, the court also recognized in its discussion of value-of-service rates that "these official discriminations, hallowed and encrusted by time and inertia, now pervade the rate structure; indeed they are the rate structure." The question here is whether such a rate structure has become so rooted in commerce law that its reformation requires action by the Congress.

[fol. 33] A good argument can always be made for the proposition that the settled policies of the Interstate Commerce Commission, whether the result of action or inertia, should be altered only by the Congress. The better view, in my opinion, is that the Congress, in delegating authority couched in such broad terms as "just and reasonable," intended the Commission to adjust its regulation in the light of changes in the industry and, whenever deemed necessary, to scuttle outmoded theories and practices without regard to their antiquity. Whatever policy is followed by the Commission, the Congress will decide whether the Commission was right or wrong in acting or in failing to act. The one great advantage, it seems to me, in an activist approach to transportation problems is that regulatory inertia and legislative lag are far more damaging in the long run than decisive regulatory action, granting, of course, that the action may not always be wise.

[fol. 34]

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 28th day of December, A.D., 1961.

INVESTIGATION AND SUSPENSION DOCKET No. 7131

ALL COMMODITIES—
FROM NEW ENGLAND TO CHICAGO AND ST. LOUIS
No. 33185

ALL FREIGHT—
CONN., MASS., R. I. TO CHICAGO & ST. LOUIS
No. 33193

FREIGHT, ALL KINDS—
MAINE TO CHICAGO & E. ST. LOUIS, ILL.
No. 33202

ALL-FREIGHT RATES FROM NEW ENGLAND TO ILL., IND., MO.
No. 33269

ALL ARTICLES—FROM WINDSOR, VT., TO
E. ST. LOUIS, ILL. & ST. LOUIS, MO.

It appearing, That on February 10, 1961, Division 2 made and filed its report in the above-entitled proceedings, 313 I.C.C. 275, and that upon joint petition of interveners and protestants, and reply thereto by a respondent, the proceeding was reopened for reconsideration;

It further appearing, That these proceedings have been reconsidered, and that the Commission, on the date, hereof, has made and filed a report on reconsideration containing its findings of fact and conclusions thereon, which report and the prior report are hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the all-commodity

rates under investigation in these proceedings, on or before February 19, 1962, upon not less than one day's notice to the Commission and to the general public by filing and posting in the manner prescribed by the Commission under section 6 of the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

By the Commission.

HAROLD D. MCCOY
Secretary

(SEAL)

[fol. 35]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 9229

[Title omitted]

JOINT ANSWER OF THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION—Filed May 14, 1962

Defendants, the United States of America and the Interstate Commerce Commission, answer the complaint, as follows:

I.

Admit, for purposes of this action, the allegations in paragraphs numbered 1 through 8, inclusive, except:

a. With respect to paragraph 6, they are without sufficient information to form a belief as to, and hence, deny, the allegations relating to the motives and considerations that attended the plaintiffs' publication of the questioned rates.

b. With respect to paragraph 8, they deny that, after hearings were held, Division 2 of the defendant, the Interstate Commerce Commission, entered its report and order, dated February 10, 1961, and aver that the hearings were followed, instead, by the report and recommended order of the examiner, served April 21, 1960, in which the examiner found that the questioned rates "tend to vitiate, and

thereby undermine, the uniform freight classification in violation of section 1(6) of the act" and "have not been shown to be just and reasonable." Defendants, further, respectfully invite the attention of the Court to the dissenting expression of Commissioner Freas to the report and order of Division 2 and to the petition for reconsideration of said report and order filed on behalf of several motor carriers, as well as the Eastern Central Motor Carriers Association, Inc., and they respectfully refer the Court to the assailed report and order of the defendant, the Interstate Commerce Commission, for a complete and accurate statement of the conclusions reached and the findings made therein.

II.

Deny the allegations in paragraph numbered 9.

III.

Defendants aver that upon the institution of the instant suit, the defendant, the Interstate Commerce Commission, Chairman Murphy, by order entered March 13, 1962, postponed the effective date of the assailed report and order from March 19, 1962, until further order of the Commission.

Wherefore, the defendants, the United States of America and the Interstate Commerce Commission, pray that the [fol. 37] relief sought in the complaint be denied and that the complaint be dismissed.

John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C.

Lee Loevinger, Assistant Attorney General.

Robert C. Zampano, United States Attorney, New Haven, Connecticut.

Attorneys for the United States of America.

Fritz R. Kahn, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C.

Robert W. Ginnane, General Counsel.

Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 38] [File endorsement omitted]

IN THE UNITED DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (RICHARD JOYCE SMITH, WILLIAM J. KIRK, HARRY W. DORIGAN, Trustees), et al., Plaintiffs,

vs.

THE UNITED STATES OF AMERICA
and
THE INTERSTATE COMMERCE COMMISSION, Defendants.

MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS—
Filed May 16, 1962

Come now All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking Line, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; The Western Express Company; Wilson Freight Forwarding Company; and The Eastern Central Motor Carriers Association, Inc., and respectfully move for leave to intervene as defendants in the above-entitled proceeding. In support of such motion movants respectfully state:

1. All States Freight, Inc., is a Rhode Island corporation engaged in business as a common carrier by motor vehicle and has its principal office in Akron, Ohio. Chicago Express, Inc., is a New York corporation with its principal office in Kearny, New Jersey. Eastern Express, Inc., is an Indiana corporation with its principal office in Terre Haute, Indiana. Long Transportation Company is a Michigan corporation [fol. 39] with its principal office in Detroit, Michigan. W. L. Mead, Inc., is an Ohio corporation with its principal office in Norwalk, Ohio. Ramus Trucking

Line, Inc., is an Ohio corporation with its principal office in Cleveland, Ohio. Roadway Express, Inc., is a Delaware corporation with principal office in Akron, Ohio. Spector Freight System, Inc., is a Missouri corporation with its principal office in Chicago, Illinois. The Western Express Company is an Ohio corporation with its principal office in Cleveland, Ohio. Wilson Freight Forwarding Company is an Ohio corporation with its principal office in Cincinnati, Ohio.

2. All of the foregoing ten corporations are common carriers by motor vehicle engaged in transportation in interstate and foreign commerce pursuant to the regulatory authority of the Interstate Commerce Commission. All of them participate, either separately or in combination with each other or with other motor carriers, in the transportation of freight between the points affected by the railroad rates which are the subject matter of the Commission's order which the complaint seeks to set aside.
3. The Eastern Central Motor Carriers Association, Inc., is a non-profit association, incorporated under the laws of the State of Ohio, with its only office in Akron, Ohio. Its membership is comprised of common [fol. 40] carriers by motor vehicle which provide public transportation in interstate or foreign commerce under the regulatory authority of the Interstate Commerce Commission. Pursuant to the purpose for which it was organized, the Association publishes and files with the Interstate Commerce Commission tariffs naming transportation charges for the account of its members and the Association appears before and submits to the Interstate Commerce Commission facts and arguments relating to the maintenance of sound economic conditions in the general transportation field.
4. Each movant was a party to the proceedings before the Interstate Commerce Commission in which was issued the order the complaint seeks to set aside. Pursuant to the provisions of Title 28, United States Code, Section 2323, 63 Stat. 105, and Rule 24(a) of the

Federal Rules of Civil Procedure, parties in interest in a proceeding before the Interstate Commerce Commission have a right to intervene in and become parties to any action involving the validity of an order of the Commission emanating from said proceeding. Accordingly, movants have a statutory right to intervene in this action.

5. Intervention by movants will neither delay nor prejudice the adjudication of the rights of the plaintiffs.

[fol. 41] 6. Tendered with this motion pursuant to the provisions of Rule 24(c) of the Federal Rules of Civil Procedure is movants' proposed answer to the complaint.

Wherefore, All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking Line, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; The Western Express Company; Wilson Freight Forwarding Company; and the Eastern Central Motor Carriers Association, Inc., respectfully pray that this Honorable Court enter an order permitting them to intervene as defendants for all purposes in this cause.

Respectfully submitted,

All States Freight, Inc., Chicago Express, Inc., Eastern Express, Inc., Long Transportation Company, W. L. Mead, Inc., Ramus Trucking Line, Inc., Roadway Express, Inc., Spector Freight System, Inc., The Western Express Company, Wilson Freight Forwarding Company, The Eastern Central Motor Carriers Association, Inc., By: Homer S. Carpenter; John S. Fessenden, 618 Perpetual Building, Washington 4, D. C., Robert J. Gillooly, 152 Temple Street, New Haven 10, Connecticut, Attorneys for Movants.

Of Counsel: Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C.

Dated: May 7, 1962.

[fol. 42] Notice of Motion (omitted in printing).

Certificate of Service (omitted in printing).

[fol. 43]

IN UNITED STATES DISTRICT COURT
FOR DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (RICHARD JOYCE SMITH, WILLIAM J. KIRK, HARRY W. DORIGAN, Trustees), et al., Plaintiffs,

vs.

THE UNITED STATES OF AMERICA
and
THE INTERSTATE COMMERCE COMMISSION, Defendants.

ORDER PERMITTING INTERVENTION—May 21, 1962

The motion to intervene, filed on behalf of All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking Line, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; The Western Express Company; Wilson Freight Forwarding Company; and The Eastern Central Motor Carriers Association, Inc., having been duly considered this 21st day of May, 1962, it is, therefore,

Adjudged, Ordered, and Decreed that the aforesaid movants be and they are hereby permitted to intervene as defendants herein for all purposes in this action.

Robert P. Anderson, United States District Judge.

[fol. 44]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, (RICHARD JOYCE SMITH, WILLIAM J. KIRK, HARRY W. DORIGAN, TRUSTEES), ET AL., Plaintiffs

VS.

THE UNITED STATES OF AMERICA and THE INTERSTATE
COMMERCE COMMISSION, Defendants

ANSWER OF INTERVENING DEFENDANTS—Filed May 16, 1962

Intervening Defendants, All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking Line, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; The Western Express Company; Wilson Freight Forwarding Company; and The Eastern Central Motor Carriers Association, Inc.; respectfully submit their answer to the complaint as follows:

I

The allegations of Paragraphs 1 to 8, inclusive, are admitted except insofar as they fail to set forth that the Hearing Examiner of the Interstate Commerce Commission who took the evidence in the proceedings before the Commission issued a recommended report and order condemning the rates as unlawful and except to the extent that they fail to reflect fully the reasoning of the entire Commission in its report and order on reconsideration.

II

The allegations in Paragraph 9 of the complaint are *denied* in their entirety.

[fol. 45]

III

Intervening Defendants further *deny* that the report and order of the entire Commission dated February 10, 1961, (Appendix B of the complaint), is unlawful for any of the reasons advanced by the plaintiffs or for any other reason whatsoever.

Wherefore, intervening defendants, All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; The Western Express Company; Wilson Freight Forwarding Company; and the Eastern Central Motor Carriers Association, Inc., pray that the complaint be dismissed as without merit.

Respectfully submitted,

All States Freight, Inc.; Chicago Express, Inc.; Eastern Express, Inc.; Long Transportation Company; W. L. Mead, Inc.; Ramus Trucking, Inc.; Roadway Express, Inc.; Spector Freight System, Inc.; Wilson Freight Forwarding Company; The Western Express Company; The Eastern Central Motor Carriers Association, Inc.; By: Homer S. Carpenter, John S. Fessenden, 618 Perpetual Building, Washington 4, D. C.; Robert J. Gillooly, 152 Temple Street, New Haven 10, Connecticut; Attorneys for Intervening Defendants.

Of Counsel: Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C.

Dated: May 7th, 1962.

[fol. 46] Certificate of Service (omitted in printing).

[fol. 233] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COM-
PANY (RICHARD JOYCE SMITH, WILLIAM J. KIRK, and
HARRY W. DORIGAN, TRUSTEES), ET AL., Plaintiffs

v.

UNITED STATES OF AMERICA and INTERSTATE
COMMERCE COMMISSION, Defendants

Before: Smith, Circuit Judge, Anderson, Chief District
Judge, and Blumenfeld, District Judge.

OPINION—July 23, 1963

SMITH, Circuit Judge.

This is an action under 28 U.S.C. §§1336, 1398, 2284 and 2321-2325,¹ and 5 U.S.C. §1009, in which the New York, New Haven and Hartford Railroad Company and its trustees in reorganization and 18 other railroad corporations seek to set aside and annul a report and order of the Interstate Commerce Commission in Investigation and Suspension Docket No. 7131, *All Commodities from New England to Chicago and St. Louis*, in which the Commission, three commissioners dissenting, overruled a report and order of its Division 2, and struck down so-called all-commodity rates on mixed or straight shipments of manufactured articles published by the New Haven and other plaintiffs, finding the rates to be a destructive competitive practice and unjust and unreasonable in violation of section 1(6) of the Interstate Commerce Act, 49 U.S.C. §1(6), Act of June 18, 1910, c. 309, §7, 36 Stat. 544. We find the [fol. 234] Commission's order unlawful because based on an erroneous interpretation of §1(6) of the Act and order it set aside and annulled.

The New Haven, faced with loss of traffic to highway carriage and TOFC (trailer on flatcar carriage) which latter it was not in a favorable position to handle extensively because of equipment and clearance difficulties, and plagued with a large tonnage of empty box cars moving West, devised a schedule of reduced boxcar rates on freight in straight or mixed carloads from points in New England territory to Chicago and East St. Louis, Illinois, Gibson and Hammond, Indiana, and St. Louis, Missouri, and filed appropriate tariffs containing these rates. Competing railroads followed suit. Eastern Central Motor Carriers Association, Inc. filed protests and petitions for suspension of the New Haven schedules. Later, 10 of its member carriers joined in the protests. The Commission suspended the schedules and instituted investigations. Subsequently, on petition of the New Haven and certain intervening shippers the suspension was vacated and the rates became effective July 16, 1959, the investigation, however, proceeding to its conclusion December 28, 1961 in the order under review.

The Commission's principal argument in support of its order is the asserted violation of §1(6) of the Act and its claimed destructive effect on the general rate structure. Under §1(6), it is "the duty of all common carriers . . . to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or proscribed . . . and every unjust and unreasonable classification, regulation, and practice is prohibited [fol. 235] and declared to be unlawful." Under this provision all carriers subject to the Act publish classifications, in groupings, of all commodities subject to transportation, and tariffs, that is rates per hundred pounds, at which articles in each classification grouping will be carried between any two points. These are the class rates. The characteristics of the commodities considered in fixing classification ratings are generally:

1. Shipping weight per cubic foot.
2. Liability to damage.

3. Liability to damage other commodities with which it is transported.
4. Perishability.
5. Liability to spontaneous combustion or explosion.
6. Susceptibility to theft.
7. Value per pound in comparison with other articles.
8. Ease or difficulty in loading or unloading.
9. Stowability.
10. Excessive weight.
11. Excessive length.
12. Care or attention necessary in loading and transporting.
13. Trade conditions.
14. Value of service.
15. Competition with other commodities transported.

The most important are density of the item (light, bulky goods are charged more per 100 pounds as it takes more cars to carry a given tonnage), perishability, difficulty in handling, and value of service. Under the latter, commodities of higher value, whose transportation characteristics were otherwise no different from those of lower value have historically been charged higher rates. The semi-monopoly position of the railroads allowed them to do this well into this century. By exacting a premium charge from high-priced commodities, the railroads were enabled to carry low-priced goods at rates not much above the out-of-pocket costs of carriage. Many times, these low [fol. 236] rates were necessary as the lower-priced goods could not compete in the market to which they were brought unless the transportation costs were low. Otherwise, they would not move at all and the traffic was desirable for the railroad as it did contribute something towards overhead. Common carrier and private trucks have today skimmed off most of the high-rated traffic.

leaving the railroads with the unprofitable freight and resulting deficits.

A second type of rate is the commodity rate. This is often described as a "concession to a particular situation" (Commission Brief, p. 14) or in some other terms implying that it is an extraordinary deviation from the normal pattern of class rates. It is a particular price quoted for freight of a particular kind from one place to another. It is lower than the class rates, and set to meet competition (either rail or by other carrier) that would otherwise take away the traffic. It is not a recent innovation, but seems historically to have always been part of the rate structure. See ICC 17th Ann. Rep. pp. 115-16 (1903). Thus, its status as exceptional is questionable. Further, commodity rates appear to have largely superseded the class rates. Only about 1 (one) percent of all railroad carload tonnage in the East moves on class rates.

All-commodity rates (sometimes called all-freight rates) are a natural outgrowth of the rate structure. Since cost of handling is greater, rates on less-than-carload lots (LCL) are higher per hundred pounds than rates on carload lots. This appears to be true of both class and commodity rates. Shippers thus tried to tender carload lots for shipment. The problem arose when a shipment of mixed articles was tendered. Unless the articles were of [fol. 237] the same class, the shipper was at first charged the LCL rate on each item, thus paying high charges for what was actually more like carload service. To remedy this, the mixing rule (Rule 10) was instituted, allowing shipment of a mixed carload at the carload rate and minimum weight of the highest class of article. This concession permitted the growth of the freight forwarders. They operated by collecting LCL shipments and shipping them at the carload rate, making a profit out of the difference between the carload rate they were charged and the LCL rate which was approximately their charge to the original shipper. With the growth of motor carriers, the railroads began to lose this freight to them—both the LCL shipments and the freight forwarder shipments moved increasingly by truck. The railroads countered with rates for truck bodies, containers (holding any goods), and rates

for all-commodities, regardless of their class. The Commission found little difficulty approving this kind of all-commodity rates, especially since they were generally either subject to a mixing rule (e.g., no more than 60% by weight of a shipment may be of one commodity) or were higher than the carload class rates that would otherwise have applied. *All-Commodity Rates Between California and Oregon, Washington*, 293 ICC 327 (1954); *All Freight, Straight Carloads, To and From the South*, 258 ICC 579 (1944); *All Freight from Butte, Mont., to Spokane, Wash.*, 257 ICC 291 (1942); *All-Freight Rates to Points in Southern Territory*, 253 ICC 623 (1942); *All Freight to Pacific Coast*, 248 ICC 73 (1941), *aff'd sub nom. Pacific Inland Tariff Bureau v. United States*, 50 F. Supp. 376 (W.D. Wash. 1943); *All Freight from Chicago and St. Louis to Santa Rosa, N. Mex.*, 243 ICC 517 (1941); *All Freight Between Harlem River, N.Y. and Boston*, 234 ICC [fol. 238] 673 (1939); *All Freight Between St. Louis and Kansas City*, 234 ICC 589 (1939); *All Freight from Chicago and St. Louis to Birmingham*, 226 ICC 455 (1938); *Commodities Between Chicago, Ill. and Twin Cities*, 226 ICC 356 (1938). All-commodity rates on straight shipments (no mixing rule) thus almost never supplanted the classifications or the commodity rates on carloads then in force, except for the LCL freight, and the railroads themselves at that time had no intention of generally superseding the existing rates. See *All Freight, Straight Carloads, To and From the South*, 258 ICC 579 (1944). The all-commodity rate was thought of as meeting this particular problem only.

The present rate is an advance only in that it is lower than the existing class and commodity rates, and is intended to apply to the exclusion of those rates on the commodities that it covers. But it is not what the layman would call "all-commodity" either. It excludes anything that cannot be carried in a boxcar—this is obviously a substantial number of things; it is graduated according to minimum weight per car, denser items thus paying less per hundred pounds as has always been true; it excludes perishables, easily damaged goods, explosives, and other such goods whose cost of handling might be extreme; it

applies only to freight westward; and there are other exclusions on basis of cost of shipment and handling.

The just and reasonable classification requirement of §1(6) was adopted in 1910 to give the Commission power to control classification, there being some doubt as to the existence of the power, and its purpose was to protect shippers by controlling the maximum charges for transportation of commodities. This purpose is fulfilled by the maintenance in being of class rates even though competitive conditions lead to the furnishing of service through [fol. 239] variously constructed rates at lower charges. The practice of the Commission over the past 21 years, as pointed out by Commissioner Webb in his dissent in the instant case, was consistent with this interpretation, permitting competitively compelled departures from the classification in e.g. *All Freight to Pacific Coast*, 248 ICC 73, aff. *Pacific Inland Tariff Bureau v. United States*, 50 F.Supp. 376 (W.D. Wash. 1943), and cases cited, supra. We can see no difference in principle between those cases and the one before us and no sound reason for so interpreting §1(6) as to prohibit such competitively compelled departures from classifications, within the established maxima, absent some other violation of the Act than the mere departure from the classification.

The Commission fears that approval of these rates would be legislation on its part, apparently because it would be the final blow to classification as a control over minimum rates and a further weakening of its role as a "giant handicapper." Having permitted over a long period exceptional rates which actually move the vast preponderance of this traffic at rates below the class rates, it would seem that it has already effectually legislated or interpreted the modification of what it now claims was the original meaning and purpose of §1(6). It is strange to find it boggling at this final step of so little effect on traffic actually moving under class rates. In any case, we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15(a)(3).² The record discloses no violation of these sections. It would appear that the Commission here in-

vokes §1(6) as a means of preserving a basis for the [fol. 240] "value of service" concept in ratemaking referred to above, in a desire to hold fast to a past which has already slipped away beyond our reach.

This "value of service" principle was useful in the early years of the Interstate Commerce Act in requiring the more prosperous East to assist in the development of railroads and commercial and agricultural enterprises in the undeveloped West at a time when the existing railroads were powerful monopolies. In his opinion in *New York, New Haven & Hartford RR v. United States*, 199 F.Supp. 635, 642 (1961), vacated 372 U.S. 744, Judge Hincks described the value of service concept as among the "official discriminations, hallowed and encrusted by time and inertia (which) now pervade the rate structure." The continuing application of the principle is, however, contrary to the letter and spirit of the National Transportation Policy amendment to the Interstate Commerce Act, passed in 1940, 49 U.S.C. §1, which, as its legislative history makes clear, was intended to permit the railroads, no longer effective monopolies, to respond to competition by asserting whatever inherent advantages of cost and service they possessed.

The Commission also concludes that the rates at issue constitute a destructive competitive practice under §15(a)(3) of the Interstate Commerce Act. This term was meant to be applied only in the context of competition between different modes of transportation and not for the purpose of supporting the classification provisions of the Act. This phrase, in its proper area of application, was dealt with by this court in *New York, New Haven & Hartford RR v. United States*; supra, [see also *Missouri Pacific RR Co. v. United States*, 203 F. Supp. 629, 634 (E.D. Mo. 1962)], as follows:

[fol. 241] "... the differential prohibition was intended to be qualified only when factors other than the normal incidents of fair competition intervened, such as a practice which would destroy a competing mode of transportation by setting rates so low as to be hurtful to the proponent as well as his competitor

or so low as to deprive the competitor of the 'inherent advantage' of being the low-cost carrier. The 'inherent advantage' factor and the 'destructive competitive practice' factor were the only two policy factors mentioned in the committee reports"

The finding that the rates will be destructive of competition rests on a basis not entirely clear to us. It would appear rather that they would enable the railroads "to respond to competition by asserting whatever inherent advantages of cost and service they possessed." The rates are admittedly compensatory, exceeding the out-of-pocket costs and in most instances making a substantial contribution to overhead. There is no finding based on evidence that the rates would destroy or impair the inherent advantages of other modes of transportation. The finding of destructive competition is not adequately supported on the present record.

The issues of this case should never have been framed under §1(6) nor should the meaning of The National Transportation Policy, as referred to in §15(a)(3), have been distorted to supplement it.

The order under review is annulled and set aside.

J. Joseph Smith, U.S.C.J.; Robert Anderson, U.S.
D.J.; M. Joseph Blumenfeld, U.S.D.J.

[fol. 242]

FOOTNOTES

¹ § 1336. Interstate Commerce Commission's orders

Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission.

§ 1398. Interstate Commerce Commission's orders

Except as otherwise provided by law, any civil action to enforce, suspend or set aside in whole or in part an order of the Interstate Commerce Commission shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action.

§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the com-

position and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application [fol. 243] is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in

good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State.

§ 2321. Procedure generally; process

The procedure in the district courts in actions to enforce, suspend, enjoin, annul or set aside in whole or in part any order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties and forfeitures, shall be as provided in this chapter.

The orders, writs, and process of the district courts may, in the cases specified in this section and in the cases and proceedings under sections 20, 23, and 43 of Title 49, run, be served, and be returnable anywhere in the United States.

§ 2322. United States as party

All actions specified in section 2321 of this title shall be brought by or against the United States.

[fol. 244] § 2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in actions under sections 20, 23, and 43 of Title 49, in the district courts, and in the Supreme Court of the United States upon appeal from the district courts.

The Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein.

§ 2324. Stay of Commission's order

The pendency of an action to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall not of itself stay or suspend the operation of the order, but the court may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the action.

§ 2325. Injunction; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order

of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

[fol. 245] ² § 1, par. (5). Just and reasonable charges. All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

§ 2. Special rates and rebates prohibited

If any common carrier subject to the provisions of this chapter shall; directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

§ 3, par. (1). Undue preferences or prejudices prohibited. It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.*

§ 15a. Fair return for carriers

(3) In a proceeding involving competition between carriers of different modes of transportation subject to this chapter and chapters 8, 12, 13 and 19 of this title, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applied [fol. 246] cable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this chapter and chapters 8, 12, 13 and 19 of this title.

[fol. 247]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COM-
PANY (RICHARD JOYCE SMITH, WILLIAM J. KIRK, and
HARRY W. DORIGAN, Trustees), et al., Plaintiffs,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, Defendants.

JUDGMENT—September 16, 1963

This cause having been heard on the plaintiff's complaint under 28 U.S.C. §§ 1336, 1398, 2284 and 2321-2325, and 5 U.S.C. § 1009, seeking to enjoin, set aside, and annul a report and order of the Interstate Commerce Commission dated December 28, 1961 in Investigation and Suspension Docket No. 7131, *All Commodities from New England to Chicago and St. Louis*, and related cases, to the extent that such report and order found unlawful and unreasonable certain freight rates as described therein; and the parties appearing by counsel having been heard and the issues duly tried; and the Court having concluded in its opinion that plaintiffs are entitled to judgment:

It is hereby Ordered, Adjudged and Decreed that the above described report and order of the Interstate Commerce Commission entered December 28, 1961, to the extent that certain freight rates, more specifically described therein, were found unlawful, be annulled and set aside in accordance with the opinion of this Court, and that the [fol. 248] United States or the Interstate Commerce Commission, or their agents or employees, are hereby enjoined from enforcing them.

Issued at New Haven, Connecticut, this 16th day of September, 1963.

J. Joseph Smith, U.S.C.J.; Robert P. Anderson,
U.S.D.J.; M. Joseph Blumenfeld, U.S.D.J.

[fol. 249]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COM-
PANY (RICHARD JOYCE SMITH, WILLIAM J. KIRK, and
HARRY W. DORIGAN, Trustees), et al., Plaintiffs,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, Defendants.

NOTICE OF APPEAL—Filed November 2, 1963

1

Notice is hereby given that All States Freight, Inc., Chicago Express, Inc., Eastern Express, Inc., Long Transportation Company, W. L. Mead, Inc., Ramus Trucking Line, Inc., Roadway Express, Inc., Spector Freight System, Inc., The Western Express Company, Wilson Freight Forwarding Company, and The Eastern Central Motor Carriers Association, Inc., intervening defendants in the above-entitled case, hereby appeal to the Supreme Court of the United States from the final judgment annulling and setting aside the order of the Interstate Commerce Commission under review, which judgment was entered on September 16, 1963.

This appeal is taken pursuant to 28 U. S. C. §§ 1253 and 2101(b).

[fol. 250] The clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

- (1) The Complaint, including Appendices A and B attached thereto, filed March 9, 1962.
- (2) Joint Answer of the United States of America and the Interstate Commerce Commission, filed May 11, 1962.
- (3) Motion of these intervening defendants for leave to intervene and file an answer, filed May 16, 1962.
- (4) Order dated May 21, 1962, permitting intervention of these intervening defendants.
- (5) Answer of these intervening defendants filed May 16, 1962.
- (6) The record before the Interstate Commerce Commission as certified to this Court under certificates dated May 7, 1962, by the Secretary of the Interstate Commerce Commission.
- (7) Brief for Plaintiffs, filed August 3, 1962.
- (8) Joint Brief of Defendant United States of America and Interstate Commerce Commission, filed September 5, 1962.
- (9) Brief for these intervening defendants, filed September 5, 1962.
- (10) Plaintiffs' Reply Brief filed September 28, 1962.
- (11) Opinion of this Court dated July 25, 1963.
- (12) Final Judgment of this Court entered September 16, 1963.
- (13) This Notice of Appeal.

The following questions are presented by this appeal:

1. Whether a Court may properly hold that the Interstate Commerce Commission erred in declining to amend an act of Congress and set aside a Commission decision for failure so to do.

[fol. 251] 2. Whether a Court, on the ground of changed economic conditions, may set aside as erroneous a decision of the Interstate Commerce Commission applying the law as enacted by Congress.

3. Whether a Court may substitute its judgment for that of the Interstate Commerce Commission as to the effect of a rate proposal upon the historic rate structure of the carriers while, at the same time, ignoring the factual findings of the Commission upon which that agency's judgment was predicated.

4. Whether a Court may set aside a decision of the Interstate Commerce Commission holding a rate proposal to constitute a destructive competitive practice where the record shows and the Commission found that the proposed rates would adversely affect the proponent thereof as well as competing carriers.

5. Whether, Congress having included in the Act several concurrent standards to be met by carrier rates, a Court may set aside a Commission decision based upon one of those standards because in its (the Court's) judgment the other standards are sufficient to protect the interests of the public and the carriers.

Robert J. Gillooley, 125 Temple Street, New Haven, Connecticut, Homer S. Carpenter, John S. Fessenden, 618 Perpetual Building, Washington 4, D. C.

Of Counsel: Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C.

[fol. 252] Proof of Service (omitted in printing).

[fol. 253] Clerk's Certificate to foregoing transcript, (omitted in printing).

[fol. 254] Secretary's Certificate to following papers
(omitted in printing).

[fol. 372]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Served April 21, 1960

Notice to the Parties

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 20 days after the final date for filing exceptions. The stated specific time periods apply to all parties and give full effect to Rule 1.21(c) of the General Rules of Practice to the extent, if any, the provisions of such rule otherwise would be applicable to this proceeding. It should not be assumed that the recommended order has become effective as the order of the Commission, until a notice to that effect, signed by the Secretary, has been served.

INVESTIGATION AND SUSPENSION DOCKET No. 7131¹

All Commodities—From New England
To Chicago and St. Louis

Decided

Proposed reduced all-rail commodity boxcar rates, various minima, in straight or mixed carloads, applicable on all articles in the Uniform Freight Classification, with certain exceptions, from points in New England, to Chicago and East St. Louis, Ill., Gibson and Hammond, Ind., and St. Louis, Mo., found not shown to be just and reasonable. Schedules ordered cancelled and proceeding discontinued.

William Q. Keenan, Thomas P. Hackett, John A. Daily, William J. Taylor, John T. Collins, and Scott W. Scully,
for respondents.

Homer S. Carpenter and John S. Fessenden for protestants.

REPORT AND ORDER

Recommended by Wm. J. Kane, Hearing Examiner

[fol. 373] In the title proceeding, by schedules filed to become effective March 16, 1959, The New York Central Railroad Company, The New York, New Haven and Hartford Railroad Company, and the Boston and Maine Railroad, hereinafter referred to, respectively, as the New York Central, New Haven, and Boston and Maine, proposed to establish new reduced all-rail commodity boxcar rates,² various carload minima, in straight or mixed carloads on all articles named in the Uniform Freight Classi-

¹ This report embraces also Docket No. 33185, All Freight—Conn., Mass. & R. I. To Chicago & St. Louis; Docket No. 33193, Freight, All Kinds—Maine To Chicago & E. St. Louis, Ill.; Docket No. 33202, All Freight Rates From New England To Ill., Ind., Mo., and Docket No. 33269, All Articles—From Windsor, Vt., to E. St. Louis, Ill., and St. Louis, Mo.

² Rates and differences in rates are stated in cents per 100 pounds.

fication, and exceptions thereto, with certain exceptions, from points in New England to Chicago and East St. Louis, Ill., Gibson and Hammond, Ind., and St. Louis, Mo. Upon protests of The Eastern Central Motor Carriers Association, Inc., the Middle Atlantic Conference,³ Law and Ingham Transportation Company, Inc.,³ and Chicago Express, Inc.,³ the Commission, by order dated March 11, 1959, suspended the operation of the said schedules to and including October 15, 1959, and instituted an investigation into and concerning the lawfulness of the rates, charges, and regulations contained in said schedules.⁴ In Docket No. 33185, by schedules filed to become effective September 2, 1959, the New Haven published the proposed reduced all-rail commodity rates from additional points in New England on the same basis as those previously placed under investigation in I. & S. Docket No. 7131. By order dated August 28, 1959, the Commission instituted an investigation into and concerning the lawfulness of these schedules. In Docket No. 33193, by schedules filed [fol. 374] to become effective September 21, 1959, the Maine Central Railroad Company proposed to establish virtually identical all-rail commodity boxcar rates from Portland, Me., to Chicago and East St. Louis. The Commission, by order dated September 11, 1959, upon its own motion, instituted an investigation into and concerning the lawfulness of said schedules.⁵ In Docket No. 33202, by schedules filed to become effective September 25, 1959, the Boston and Maine Published reduced rates similar to those under the title proceeding from additional originating points in Massachusetts and Windsor, Vt., to points in Illinois, Indiana and Missouri. By order dated September 22, 1959, the Commission instituted an investigation into and concerning the lawfulness of said schedules.

³ No appearances were entered for these 3 protestants.

⁴ The order of March 11, 1959, insofar as it suspended the operation of these schedules, was subsequently vacated and set aside, as of July 16, 1959, by Division 2, acting as an appellate division, by order dated July 6, 1959, but continued in effect the investigation proceeding.

⁵ The rates of the Maine Central expired with March 10, 1960.

The rates under investigation in this proceeding are contained in Section 2 of the New Haven's Tariff 11-C I. C. C. F4501 and supplements thereto, and in similar tariff publications of the other respondent railroads. For convenience, the rates under investigation will be referred to as the Section 2 rates.

The proceedings involving these four dockets were heard on a consolidated record and will be disposed of in one report. In addition, the Central Vermont Railway, Inc., in Docket No. 33269, published rates on approximately the same level as the other carriers from Windsor, Vt., to East St. Louis and St. Louis, effective November 25, 1959, (which was subsequent to the hearing), the lawfulness of which was likewise made subject to investigation by order dated November 19, 1959. The parties stipulated that the issue in this docket may be governed by the decision in Docket No. 33202.

[fol. 375] The only witnesses testifying in support of the Section 2 rates were presented by the New Haven, with the exception of one witness presented by the Maine Central Railroad,⁶ whose testimony was limited to a statement that the rates under investigation were published in order to keep this carrier on a parity with the Boston and Maine, which had published section 2 rates from Portland, Me., to Chicago and St. Louis. Thus, the respondents must rely entirely upon the evidence presented by the New Haven.

The assailed rail rates apply only in a westbound direction from stated origins in New England on all commodities, with certain specified exceptions, in either straight or mixed carloads. All shipments within the 20,000 and 30,000 pound brackets are limited to movements in box cars 40 feet 7 inches or shorter; where longer box cars are used, rates based on the 40,000-pound bracket will apply on such shipments. The rates are limited to apply

⁶ In their joint brief, the New York Central, Boston and Maine, and Maine Central assert that the rates in question were published by them to retain the parity between railroads from common and competitive New England points on boxcar traffic to the Chicago and St. Louis areas.

on all freight in box cars, excluding specially equipped and damage-free cars, and permit no transit or stop-off privileges, and do not apply on import, export or ex-water traffic. The rates are scaled to minima weight ranging in 10,000 pound intervals from 20,000 pounds to 70,000 pounds based on Docket 28300 groupings, and represent in each of the weight brackets involved the following percentages of the Docket 28300 first-class rate, including the Ex Parte 212 increases:

| | |
|---------------------|-------|
| 20,000 Pounds | 45.0% |
| 30,000 Pounds | 32.5% |
| 40,000 Pounds | 25.0% |
| 50,000 Pounds | 22.5% |
| 60,000 Pounds | 20.0% |
| 70,000 Pounds | 19.0% |

[fol. 376] The following table is illustrative of respondents' proposal:

| From | | Short line Miles | Rates and Min. Wt. | | | Car-mile earnings (cents) |
|---------------------|-------------------|------------------------|--------------------|----------|----|---------------------------------|
| Boston, Mass. To | Present 30,000 | | Proposed | | | |
| | | | Rate | Min. Wt. | | |
| Chicago, Ill. | 973 | 204 | 213 | 20,000 | 44 | |
| | | | 118 | 40,000 | 49 | |
| | | | 90 | 70,000 | 65 | |
| St. Louis, Mo. .. | 1174 | 233 | 238 | 20,000 | 40 | |
| | | | 132 | 40,000 | 45 | |
| | | | 101 | 70,000 | 60 | |

The commodities excluded from the rates here assailed are expressed in the form of item numbers in the Uniform Freight Classification, which include those applicable to Plan III trailer-on-flat-car rates' (TOFC), such as livestock, explosives, military equipment, scientific equipment, and perishable freight. Excluded also is each commodity group which is reported to have experienced loss and damage expense in excess of 8.7 cents per cwt. reflected in Statement 5-58, published by the Commission's Cost Find-

The lawfulness of the rates under Plan III (TOFC) is presently under investigation in another proceeding in Docket No. 32533.

ing Section by territories for the year 1957.⁸ The section 2 rates have not been limited by any 60 percent or mixing rules that are applicable to the section 1 all-commodity rates published in the same tariff and still in effect. If the charge accruing on a given shipment under section 1 of this tariff is lower than that accruing under section 2, the charge accruing under section 1 will apply.

The New Haven's stated purpose for publishing these reduced rates is to stop the diversion of high grade rail tonnage to the highways, and to attract for the railroads [fol. 377] a reasonable share of the increased high grade tonnage attributable to the nation's expanding economy and the rise in national income, and to refill empty boxcars westbound from New Haven territory; a further reason, it is stated on brief, is to establish a box car rate level on a competitive parity with the Plan III TOFC rates. It contends that the rate reductions under investigation are of vital importance to the welfare of the New Haven and its ability to serve the public of New England. To illustrate the general financial plight of railroads of this country, the Commission's statistics are cited, as published by the Bureau of Transport Economics and Statistics, *Transport Economics*, January, 1959, showing revenues of carriers and national income for the years 1939, and 1947 through 1957. Based on statistics taken from that publication, respondents point out that the national income increased 500 percent between 1939 and 1957; that the freight revenues of motor carriers during that period increased 777.6 percent in contrast to the railroads' revenue increase of only 263.7 percent. In 1939, the railroads hauled 62.4 percent of the intercity freight traffic in this country compared with 9.7 percent hauled by motor carriers, including private carriers, whereas, in 1957 the railroads hauled only 46.3 percent of this traffic compared with 19.3 percent hauled by motor carriers for the same year. Also, the distribution of intercity freight traffic in this country from 1939 through 1957, in millions of ton-miles, is shown to be 338,850 for the railroads, and 52,821 for motor carriers, including pri-

⁸ Excluded in these exceptions, for example, are such items as plumbers' goods, stoves, ranges and parts, furniture, furnaces, radiators and parts, china, crockery, earthenware and refrigerators.

vate and contract carriers, in 1939, in contrast with 1957 tonnage of 626,222 for the railroads and 260,856 for the motor carriers.

It is pointed out by the New Haven that the substantial [fol. 378] diversion of rail tonnage to motor carriers has been in part the result of the country's huge highway expansion programs since World War II in connection with more liberal state laws governing truck weight and height limits, which have made it possible for truckers in official territory to increase their payloads from approximately 20,000 pounds in 1934, to approximately 40,000 pounds today. It is asserted also that the rail rates on manufactures and miscellaneous traffic, as well as the rail rates utilized by freight forwarders, have taken the full impact of all ex parte increases since the year 1947, which increases have in effect created a rate umbrella with respect to long hauls, and thereby made it economically feasible for motor carriers to compete on high-grade traffic on the last 600 miles of a 900 mile haul. Much stress is placed upon the fact that the Eastern District railroads have been and presently are dependent upon high-grade manufactures and miscellaneous traffic for a large share of their total revenue, and that this is particularly so as to the New Haven. For example, the percentage of revenue from manufactures and miscellaneous traffic for a large share of their total revenue, Eastern District railroads and the New Haven ranged from 41.4 to 45.2 percent, respectively, in 1939, to 49.9 and 62.5 percent, respectively, in 1957. On less-than-carload traffic, the percentage thereof to total freight revenue for the Eastern District and the New Haven ranges from 7.5 and 18.9 percent, respectively, in 1939, to 3.1 and 5.4 percent, respectively, in 1957. The principal witness for the New Haven stated that during 1958, the New Haven's manufactures and miscellaneous traffic produced 61.5 percent of its total freight revenue; during the same year, its average revenue [fol. 379] per car was \$115.24 from all carload freight and \$127.23^a from all manufactures and miscellaneous carload

^a New Haven's Exhibit No. 8 shows average revenue per car as \$135.84, on interline forwarded manufactures and miscellaneous traffic for the year 1958.

freight. On interline forwarded manufactures and miscellaneous traffic the volume of tonnage decreased from 2,941,557 in 1947 to 1,479,902 in 1958, a drop of approximately 50 percent, whereas the revenue therefrom decreased only 20.4 percent during that period. Accordingly, the New Haven contends that its present revenue levels have been preserved only at the expense of a very great diversion of traffic, and if nothing is done to halt this process, a serious contraction of the rail transportation plant and a curtailment of the rail transportation facilities and service would result. This tonnage loss, which has occurred most heavily with respect to high-rated high-grade traffic, which is the most profitable to haul, has been especially damaging in New England where inbound traffic tends to consist of raw and semi-finished materials, the outbound traffic generally consisting of finished high-grade materials which are vulnerable to truck competition. The resulting outbound tonnage imbalance has become an acute problem to the New Haven, which dispatches 149 empty box cars daily to Chicago, St. Louis and beyond having a capacity of approximately 7,450 net tons, or computed on an annual basis, its empty box car capacity would approximate three million net tons. Freight forwarder interline traffic on the New Haven decreased from 222,140 tons in 1947 to 218,565 in 1958, whereas its revenue therefrom increased from \$1,280,529 in 1947, to \$2,215,282 in 1958. It is asserted that since forwarder rates have taken the full impact of all increases from Ex Parte 162 to Ex Parte 206A, inclusive, which total approximately 98 percent, the freight forwarder [fol. 380] has found himself unable to compete ratewise with motor carriers. In this connection, interline forwarder traffic on the New Haven decreased from 290,766 tons in 1955, to 218,565 tons in 1958.

In an effort to compete with other forms of transportation and to prevent further diversion of rail traffic, the railroads in the Eastern District published in recent years the so-called Plan III TOFC rates. These rates are expressed in terms of charges per maximum consignment of 70,000 pounds, and cover the movement between rail ramp yards of not more than two trailers on one flat car. These ramp-to-ramp rates are based on a flat charge, regardless of

the contents of the trailers, the trailers being owned or leased by the shippers. However, the lading must consist of at least two commodities, no one of which shall exceed 60 percent of the total weight of the lading. The railroads, however, perform no pickup or delivery services under the Plan III charges. See *Forwarder Volume Commodity Rates, Chicago and New York*, 308 I. C. C. 455, 456.

The section 2 rates, which are admittedly designed to attract the same type of traffic sought by the Plan III rates, are not subject to any mixing rules, such as the 60 percent rule applicable under Plan III service. The respondent strongly asserts that it is not feasible to apply a mixing rule to the section 2 rates if they are to be on a competitive parity with the Plan III rates. It is pointed out that patrons may combine two trailers to make up a single Plan III consignment, each consisting of trailerloads of a single commodity. When two such straight trailerloads are combined they satisfy the 60 percent Plan III mixing rule, although each trailer may be destined to a different consignee's receiving dock. The same would apply whether the combined trailers are consigned by one shipper or by [fol. 381] two different shippers so long as the trailers are tendered together at the Plan III rail ramp yard and combined on the same date under a single billing.

The Eastern District railroads also operate under Plan I and Plan II TOFC rates. Plan I rates cover movements by rail of trailers of common motor carriers, with the shipment moving on one bill of lading and billing being done by the trucker. This, in effect, amounts to a division of revenues between motor and rail, with the traffic moving under rates in the regular motor carrier tariffs. Under Plan II the rates are on a parity with those published by motor carriers, the railroad performing its own door-to-door service, moving its own trailers on flat cars and performing services similar to those offered by the truckers.

Since Plan III service tends to expand the terminal area in which competing carriers may efficiently operate, the New Haven claims it has found itself engaged in intense competition with other railroads. During the New Haven's first two months' operations under Plan III service in the latter part of 1958, the New York Central diverted from it the equivalent of 350 to 400 box cars of traffic moving from

Boston to St. Louis because of the New Haven's disability to provide Plan III service. The record indicates that the continual loss of additional tonnage to other railroads operating under Plan III rates is still a threat. This diversion of tonnage, it is asserted, has been attributed to the New Haven's lack of a sufficient number of flat cars to compete on a volume basis, as well as to certain physical clearance limitations on some of its lines. The New Haven's proposal to remedy this situation by supplying two box cars in place of a single flat car in its Plan III service failed to meet the approval of the Commission in *All Commodities*, [fol. 382] *Mixed Carloads, in Official Territory*, 306 I. C. C. 29 (1959). In that case Division 3 found that many of the proposed boxcar rates were below out-of-pocket costs and that the all-freight traffic embraced high-class as well as low-class articles. Except in extraordinary circumstances, it was therein stated, the Commission has not approved all-freight rates below 45 percent of first-class for movement in box cars. The proposed charges in that case were on a level approximating 15 percent of first-class. The New Haven has amended its tariff rules to allow it to supplement its supply of long flat cars by substituting two short flat cars for one long flat car under Plan III service. This proposal is presently under investigation before the Commission in I. & S. Docket No. 7022, the suspension period therein having expired.

Since the proceeding in *All Commodities, Mixed Carloads, in Official Territory*, supra, the New Haven has had success in eliminating some of its disabilities in providing Plan III TOFC service. In this connection, it has acquired some additional clejan type flat cars (79 feet long) and hopes to acquire a few more in the near future. The 40-foot trailer, which is a growing feature in TOFC business, cannot be loaded on the standard 40-foot flat car, although it can be loaded on the clejan type car. The New Haven has 353 standard 40-foot cars and expects to have in the near future approximately 175 clejan type cars at its disposal. The number of off-line cars available to it tends to vary widely from day to day, averaging between 10 and 15 flat cars per day. The situation with respect to clearances has been remedied somewhat so as to permit the use of so-called

high cube trailers (12' 6" high) on standard flat cars (3' 8" high), thereby enabling it to handle that combination of [fol. 383] equipment between New Haven and Maybrook, N. Y., known as the Maybrook gateway. Clearance problems have been remedied also on the so-called shore line to permit the operation of the same combination of equipment from New Haven to Providence and Boston, thus allowing such traffic to move between Boston and Maybrook. Clearance restrictions still prevail, however, on its line between New Haven and the New York Harbor area in connection with its local TOFC service between New York, on the one hand, and various New England points, local line, on the other. The only interline TOFC traffic that the New Haven can handle with the clejan car is with one of its connections which serves Chicago, but not St. Louis. The New Haven can now perform TOFC service by providing two flatcars to accommodate two trailers in connection with movements between Boston and Chicago as well as between Boston and St. Louis so long as each trailer can be handled on a standard 40-foot car. The so-called TTX¹⁰ cars can be rented, but the New Haven is not a member of the TTX organization and has no such cars on its line other than those received from other railroads. Two trailers on a TTX car can now move between Boston and Chicago via the Maybrook route, whereas previously only the clejan type equipment could be used to accommodate two trailers per flat car over that route. Thus, it is apparent that the New Haven's ability to compete for Plan III traffic on a volume basis is still somewhat limited.

The New Haven conducted a six-months' study covering carload traffic, 10,000 pounds or over, rated 71 cents or higher, excluding all commodity traffic, that moved from New Haven origins to Chicago from July to December, 1957. Based on this study, the New Haven introduced data showing [fol. 384] a comparison of revenues actually received in each of seven minimum weight brackets ranging from 10,000 to 70,000 pounds and over with the revenue that would have been received on this traffic had the section 2 rates been in effect. However, the only traffic included in

¹⁰ Trailer train cars.

this study is that which moved at higher than section 2 rates. Accordingly, this data would tend to reflect the impact of the lower section 2 rates on traffic which previously moved other than under all-commodity freight rates. The comparison reflects that the application of section 2 rates to this traffic would have effected reductions in revenues varying from 3.1 percent at the 10,000 to 20,000 pound bracket, to 13.6 percent at the 70,000 pound and over bracket. The revenues actually received aggregated \$418,923.46, whereas the revenues computed on the basis of the section 2 rates would aggregate only \$379,412.52, reflecting a revenue loss of approximately 9.4 percent. Shipments covered by this study weighed 30,411,040 pounds, but the volume of traffic which could be affected by the section 2 rates is somewhat overstated to the extent that some of the shipments moved in tank cars and some on flat cars, whereas the section 2 rates are limited in application only to box-car traffic.

The New Haven made a survey of the traffic moving under section 2 rates during the 76-day period July 16 to September 30, 1959, after the section 2 rates became effective, showing a total of 364 cars, aggregating in weight 18,452,368 pounds, which were broken down into three groups, namely: (a) traffic that previously moved in rail boxcar, (b) traffic that previously moved partly by rail and partly by other than rail carriage, and (c) traffic that previously moved entirely by other than rail carriage. Based on that survey, [fol. 385] following is a comparison of the weight and revenue yield of each of the three groups of traffic that moved under the section 2 rates with the rated weights and revenue yields attributable to each of the same traffic groups re-priced to reflect charges that would have accrued thereon under rail rates in effect prior to the publication of section 2 rates:

| Group | No. of Cars | Weight ¹ | Revenue | Average Wt. Per Car ² | Average Rev. Per Car |
|-----------------|-------------|---------------------|--------------|----------------------------------|----------------------|
| SECTION 2 RATES | | | | | |
| (a) | 255 | 12,296,077 | \$144,709.86 | 48,220 | \$567.49 |
| (b) | 67 | 3,725,627 | 38,182.03 | 55,606 | 569.88 |
| (c) | 42 | 2,430,664 | 24,522.26 | 57,873 | 583.82 |
| Total | 364 | 18,452,368 | \$207,414.15 | 50,693 | \$569.82 |

| | | | | | |
|---------------------------------|-----|------------|--------------|--------|----------|
| OTHER THAN RAIL SECTION 2 RATES | | | | | |
| (a) | 255 | 11,648,857 | \$178,529.42 | 45,682 | \$700.11 |
| (b) | 67 | 3,621,435 | 57,511.39 | 54,051 | 858.37 |
| (c) | 42 | 2,359,062 | 33,756.22 | 56,168 | 803.71 |
| | 364 | 17,629,354 | \$269,797.03 | 48,432 | \$741.20 |

¹ Rated weight as to other than rail section 2 rates.

² Average rated weight as to other than rail section 2 rates.

Under group (b), four shipments in the 30,000 pound bracket, aggregating 122,743 pounds, were the only shipments weighing less than 40,000 pounds, whereas no shipments less than 40,000 pounds were listed under group (c). The respondent stresses these factors as a strong indication that the section 2 rates at the 20,000 and 30,000 pound brackets are too high to be competitive with the prevailing truck rates. In this connection, the section 2 rate, of 154 cents, minimum 30,000 pounds, from Boston to Chicago is 50 cents lower than the corresponding section 1 rate of 204 cents. Under group (a), the average revenue per car of \$567.49 under the section 2 rates is approximately 19 [fol. 386] percent less than the average revenue per car of \$700.11 under other than rail section 2 rates, but this is based on the assumption that the cars would have been loaded to the same extent in both instances. Although the section 1 all commodity rates are applicable only to 30,000 pound minimum, the average weight for all-commodity box-cars during 1957 and 1958 was less than 20,000 pounds. Accordingly, the calculated average revenue per car of \$700.11 under rail rates other than section 2 would be somewhat

over-stated. Based on an alleged survey, the New Haven indicates that 50 percent is a conservative estimate of the traffic in group (b) that would have moved by rail if the section 2 rates had not been in effect. This calculation has some support in the record to the extent of testimony given by several shippers that have utilized section 2 rates. It is contended that a realistic appraisal of the revenues that would have been earned under other than rail section 2 rates would include only the \$178,529.42 figure under group (a) above, in addition to one-half of the \$57,511.39 figure under group (b) above, or an aggregate sum of \$207,285.11, which is substantially the same amount actually received under the section 2 rates now in effect. Stated differently, in order to earn revenue comparable to what it would have earned under previous rail rates, the New Haven had to transport 4,293,477 pounds of additional traffic under section 2 rates, i.e., 50 percent of group (b) tonnage and all of group (c) tonnage.

In order to show that the section 2 rates are on a competitive parity with the Plan III TOFC rates, the New Haven conducted a study of its Plan III traffic that moved from Providence, New Haven, and Boston to Chicago, during August, 1959, covering the movement of 88 trailerloads on 58 flatcars consisting of commodities that had previously moved by rail boxcars. This study reflects that the actual [fol. 387] revenue received on this traffic, aggregating 2,398,007 pounds, under Plan III charges amounted to \$23,241.11, whereas charges computed on the basis of section 2 rates would have aggregated the sum of \$25,075.56, or additional revenue of \$1,834.45. The New Haven's experience with Plan III rates revealed by studies made by it since those rates became effective, indicates that the average Plan III consignment is in excess of 50,000 pounds. At the 50,000 pound bracket, the section 2 rates are above existing Plan III rates. For example, the Plan III charge from Boston to Chicago on 50,000 pounds is the equivalent of a rate of 99 cents, whereas the corresponding section 2 rate of 106 cents is 7 cents higher. The New Haven points out that among the patrons immediately interested in the section 2 rates are freight forwarders, and other large shippers originating freight on the New Haven situated with

receiving docks adjoining its origin ramp yards in Boston and Springfield and near the ramp yards of other railroads similarly situated. Since drayage expenses in such circumstances under Plan III service would be nominal, the principal difference between Plan III and section 2 service would be the cost to the shipper of providing trailers, which are available in the New England area at a cost, on a 35,000 pound shipment, of slightly more than 5 cents per hundred pounds. It is therefore contended that the section 2 rates must be within the equivalence of 7 cents per cwt. of the Plan III charges at the 50,000 pound bracket if the section 2 rates are to be on a competitive parity with the Plan III rates in New England.

In order to utilize Plan III rates for comparative purposes, they should be supplemented to reflect the additional costs for drayage and trailer rentals which must be borne by the shipper. Of course drayage costs differ widely, depending on various factors, such as the availability of local [fol. 388] drayage service and the distance of each shipper from the rail ramp yard. The Bradley Express publishes in its tariff a charge of \$7.75 per hour, without minimum, for a tractor and driver only. Based on this tariff, the drayage charge for a four-hour round-trip movement between New Haven and Springfield or New Haven and New York, a distance of over 60 miles, would be \$15.50 each way, assuming a trailer movement in both directions. On intrastate traffic in Connecticut, the Connecticut Public Utilities Commission has prescribed a minimum level of \$9.50 per hour for exclusive use of tractor and trailer of the largest type. The Cost Finding Section of the Commission, in its Statement No. 3-58, Cost Scales for New England Territory for 1957, indicates, at page 43, that the average speed of truck operation in New England is 25.2 miles per hour, and that the line-haul cost per vehicle is 36.36 cents per mile. Based on these figures, the average line-haul cost would be \$9.16 per hour, which includes the cost of both tractor and trailer. The New Haven's principal witness was of the opinion that the cost of the operation of a tractor alone would not exceed \$7.50 per hour. This witness points out that the New York Central offers trailers through a subsidiary at a charge of \$18.00 per one-way trip in connection with its

Plan III service from Boston to Chicago and other points. The cost at Chicago to Plan III patrons of the Erie and Wabash railroads, both of which concur with the New Haven in Plan III rates, ranges from \$5.70 to \$7.02 per hour for a tractor and driver to haul a trailerload in excess of 32,000 pounds. At St. Louis and East St. Louis patrons of Plan III service offered by the Wabash receive such service at costs ranging between \$5.50 and \$5.85 per hour, depending on the volume and character of the Plan III freight, whether [fol. 389] loading or unloading of trailers is involved, and on the distance from ramp to truck dock.

Various rate studies were presented by the New Haven in which it computed the total cost¹¹ incident to shipping one trailer under Plan III rates from various points on the New Haven to Chicago and East St. Louis. Based on these studies, the total Plan III cost to a patron shipping a 35,000 pound trailerload to Chicago would range from \$278.25 to \$328.25, using \$7.50 per hour for the drayage operation; using the \$9.50 per hour basis, the cost would range from \$286.25 to \$345.05.

The cost to East St. Louis would range from \$331.00 to \$381.00 at the \$7.50 per hour basis, and from \$341.00 to \$397.80 at the \$9.50 per hour basis. From various points on the New Haven the section 2 charges on a 35,000-pound shipment to Chicago would range from \$440.00 to \$480.00, and to St. Louis or East St. Louis from \$492.00 to \$536.00. On a 35,000-pound shipment from any of the 31 origin points on the New Haven to Chicago and St. Louis or East St. Louis, the cost to the patron under section 2 rates over the Plan III cost is in excess of \$100.00. This is of particular significance since one of the competitive aspects of Plan III service is the ability of two or more shippers to combine two 35,000-pound trailerloads and tender them to the railroad as a single consignment. Using the \$7.50 per

¹¹ Cost to shipper includes line-haul cost under Plan III rates, a trailer rental of \$18.00, and drayage expenses figured on the basis of \$7.50 and \$9.50 per hour to and from rail heads at both origin and destination points. Truck miles between rail heads are based on Household Goods Carriers Bureau MF-ICC 71, and tractor running time is computed on basis of 25.2 miles per hour as taken from Statement 3-58. Drayage expense at Chicago and St. Louis or East St. Louis is based on four hours' running time.

hour basis, the Plan III total charges for two trailerloads range from \$556.50 to \$656.50 to Chicago, and from \$662.00 [fol. 390] to \$762.00 to St. Louis. In the highest weight bracket, the section 2 charges range from \$581.00 to \$637.00 to Chicago, and from \$651.00 to \$714.00 to St. Louis. In that bracket the section 2 charges are shown to be higher than the Plan III charges in some instances, but lower in others.

The protestant also developed Plan III total charges¹² from Boston to Chicago and East St. Louis in terms of cents per hundred pounds, and a comparison of those charges with the corresponding section 2 rates is shown as follows:

| Boston to Chicago | | Plan III Charges | Section 2 Rates |
|------------------------|----------------------|---------------------|--------------------|
| 20,000 | pound shipment | 284.2 cents | 213.0 |
| 30,000 | " " | 190.2 " | 154.0 |
| 40,000 | " " | 143.0 " | 118.0 |
| 50,000 | " " | 114.8 " | 106.0 |
| 60,000 | " " | 95.4 " | 95.0 |
| 70,000 | " " | 82.2 " | 90.0 |
| Boston to E. St. Louis | | | |
| 20,000 | Pound shipment | 336.9 " | 238.0 |
| 30,000 | " " | 225.4 " | 172.0 |
| 40,000 | " " | 169.4 " | 132.0 |
| 50,000 | " " | 135.9 " | 119.0 |
| 60,000 | " " | 113.0 " | 106.0 |
| 70,000 | " " | 97.3 " | 101.0 |

The protestant points out that the total cost to the shipper under Plan III service would be more than the corresponding cost under section 2 box-car service in all weight brackets other than the 70,000-pound bracket. In this con-

¹² Trailer rental expense per shipment is based on a rental per trailer of \$7.50 per day covering the use of two trailers over a four-day period. Pickup and delivery costs covering running cost from the carrier's ramp to the shipper's dock or vice versa were based on actual studies made by the cost finding section for the eastern and western territories, taken from the Commission's Statements 3-58 and 3-57.

nection, the Plan III TOFC rates are designed to induce volume shipments at the highest weight bracket. On this basis it must be concluded that the section 2 rates are on [fol. 391] substantially the same level as the Plan III TOFC rates.

The protestant introduced various exhibits showing comparisons of the section 2 rates with other rates from and to identical points, including the section 1 all-commodity rates and the rail Plan II TOFC rates, together with the corresponding motor carrier rates. Appendix A hereto is illustrative of the respondents' section 2 rates here under investigation from and to selective points, together with the corresponding section 1 rates, and the percentage each rate bears to the corresponding first-class rate. The section 2 rates from some 53 points of origin to the destinations involved range from 18.8 to 45.1 percent of first class, whereas the section 1 rates, which carry a 30,000 pound minimum weight, range from 42.4 to 46.0 percent of first class. On the lowest weight bracket, (20,000 pounds), the section 2 rates, with five minor exceptions, are somewhat above the section 1 rates, but on the highest weight bracket, (70,000 pounds), the section 2 rates reflect drastic reductions under the section 1 rates. For example, the section 2 rate of 97 cents from Springfield, Mass., to St. Louis is only 43.1 percent of the corresponding section 1 rate of 225 cents. The rail Plan II TOFC rates, which are substantially on the same level as the corresponding motor carrier rates, range from 23 to 58.6 percent of first class. Also a comparison of the section 2 rates with some 39 specific rail commodity rates, applying to and from the same points, indicates that the section 2 rates are considerably lower in the higher weight brackets. For example, the rail commodity rate on Cellulose film from Boston to Chicago is 165 cents, minimum 32,000 pounds, whereas the corresponding section 2 rates at the 30,000 and 70,000-pound brackets are 154 cents and 90 cents, respectively. The protestant [fol. 392] points out that since the section 2 rates apply on straight as well as mixed carloads, these rates represent the highest level of rates applicable on any commodities not excluded thereunder. Where such commodities would otherwise take higher rates under other tariffs, the section 2

rates will apply, but where such commodities are subject to lower class or specific commodity rates, those rates will apply. Accordingly, the above commodity rate of 165-cents would be defeated or superseded by the lower section 2 rate of 154 cents. Certain shipper interests, including two shipper associations, presented testimony in support of the proposed rates.

The testimony of certain shipper interests, including two shipper associations, in support of the section 2 rates, indicates they have increased substantially their volume of traffic since inauguration of these rates. However, the record shows that the section 2 rates available to all of these shippers are substantially lower than the rates under which this traffic previously moved. Prior to using the section 2 rates one shipper, Stanley Works of New Britain, Conn., had been shipping 93,000 pounds of hardware per week from its New Britain plant, 69 percent of which moved by motor carrier, whereas during the first 15 weeks' operation under the section 2 rates, it shipped 155,500 pounds per week, an increase in tonnage of more than 60,000 pounds weekly. The reductions under the section 2 rates have made it feasible for this shipper to initiate a pool-car operation to Chicago which has resulted in loadings ranging from 70,000 to 100,000 pounds per car since September 4, 1959. Shipments of drapery hardware averaging 28,000 pounds per week had been moving from its Stanley-Judd Division at Wallingford, Conn., to Detroit by both rail Plan II and motor carrier service. Under its section 2 operations, this [fol. 393] traffic, which has increased to 34,745 pounds per week, is shipped to a warehouse at Melrose Park, Ill., and backhauled as far east as Detroit. The witness for this shipper testified his company had no claims for damages since using the section 2 rates in July, 1959.

Another shipper, Landers, Frary, and Clark of New Britain, has found it feasible under the section 2 rates to ship less-than-carload orders in pool carloads to break-bulk points in Chicago and St. Louis and backhaul as far as Detroit. Operating entirely under the section 2 rates, it shipped 991 tons of merchandise to these two points from July 16 to October 19, 1959, the average loading per car increasing approximately 14,000 pounds. From March 26

to July 15, 1959, this traffic moved entirely by motor carrier, but prior to that time it moved entirely by rail.

The Plymouth Cordage Company, Plymouth, Mass., shipped during the first three weeks' operation under section 2 rates, 7 carloads of its products to Chicago, aggregating 432,143 pounds, of which 111,501 pounds would otherwise have moved by motor carrier prior to the section 2 rates. This additional rail tonnage represents shipments destined for points west of Chicago which previously moved by motor carrier directly to the customers but now moves to a Chicago public warehouse for transshipment by motor carriers beyond to prospective customers.

The Sponge Products Division of the B. F. Goodrich Company has plants at both Derby and Shelton, Conn., shipping exclusively by motor carrier from the former plant. Since September 10, 1959, this company has shipped approximately 153 tons of sponge rubber cushioning material from Shelton to Chicago at the section 2 rates, the [for 394] average loading per car being approximately 58,000 pounds. Prior to these rates this traffic moved under a motor carrier class rate, although an identical rail class rate was available. This company indicated that if the 60 percent mixing rule were applicable on the section 2 rates, it could not use them.

A witness appearing on behalf of Montgomery Ward and the Chicago Shippers Association testified that the association, in which Montgomery Ward is a member, shipped entirely by rail both before and after the publication of the section 2 rates. In the opinion of this witness, the association could not continue to operate if the section 2 rates were cancelled, because freight forwarders in that circumstance could then provide cheaper service for its members. This witness indicated that Montgomery Ward prefers to ship through a shipper's association rather than through freight forwarders, since the former permits it to retain more control over its shipments.

In its pool-car operations from Waterbury, Conn., to Chicago and St. Louis, the Scoville Manufacturing Company shipped an average of 640 tons of brass-milled products averaging 35.5 tons per car during its first seven weeks' operation under section 2 rates. This pool-car traffic pre-

viously moved primarily by rail boxcar, averaging only 20.6 tons per car. Prior to the section 2 rates, this company had utilized Plan II TOFC service to the extent of one shipment a week to Chicago and approximately one shipment per month to St. Louis, averaging 16.8 tons and 17.2 tons per car, respectively. This traffic is now moving under the section 2 rates. Based on a recent study of private carriage with respect to its traffic that moves between Waterbury and two destination points not covered by this proceeding, the witness indicated that the publication of the [fol. 395] section 2 rates made it nonfeasible for it to engage in private carriage between Waterbury and East St. Louis or Chicago. This witness indicated also that his company could not use these rates if made subject to the 60 percent mixing rule.

Both the New Haven and the protestant submitted cost data based on the Eastern District territorial average costs taken from the Commission's cost finding section's Statement 5-58, Rail Carload Cost Scales by Territories for the Year 1957. The cost data reflects the average costs shown in the rail carload cost scales for the Eastern District after adjustment thereof for the differences in mileage from various points of origin in the Eastern District to the Chicago and St. Louis areas. These cost studies reflect a rate to cost relationship that would be representative of the operations of all the respondent railroads performing section 2 service from other points of origin not specifically covered therein. Costs are shown for the movement in through trains and are based on the rail Docket 28300 short line miles, increased for 13 percent circuitry. No study of the actual costs of the New Haven for providing the service involved was made in this proceeding.

The New Haven computed costs to the Chicago and St. Louis areas from 12 New Haven stations; the costs from four representative origins are reproduced in Appendix B hereto. These costs, which are based on a one carload movement per consignment, reflect earnings under the section 2 rates that exceed fully distributed costs by substantial margins from all points involved. However, these costs are understated to the extent that they fail to include [fol. 396] an allowance for loss and damage expense, as well as an adjustment to reflect present day costs. The

New Haven asserts that the omission of allowances to cover these two factors is off-set by the amount already included in fully distributed costs covering the passenger and less-than-carload deficits, which, it contends, are not actual costs of performing the service contemplated under the section 2 rates. These deficits are part of the over-all expenses of operating the railroad. Therefore, other traffic, including the movement of high-grade merchandise contemplated under the section 2 rates, must absorb a proportionate share of the costs incident to these deficits.

The costs as computed by the protestant and reproduced in Appendix C hereto are, in effect, a restatement of the costs set forth in Appendix B reflecting adjustments for three additional factors, viz, (a) an increase of 6 percent for inflation since 1957; (b) an increase of 8.747 cents per hundred pounds to reflect loss and damage expenses, and (c) the incremental costs incident to the movement of two rather than one rail box car per consignment.

Based on a one carload movement, the protestant's data indicate that the section 2 rates exceed out-of-pocket costs from all four representative origin points in the Eastern District. On movements to the Chicago area the rates range from a maximum of 46 percent to a minimum of 28 percent above out-of-pocket costs. In addition, on these movements, the rates equal or exceed fully distributed costs, ranging from a maximum of 16 percent above fully distributed costs to a minimum of just meeting fully distributed costs. With respect to movements from the same origins to the St. Louis area, the rates exceed out-of-pocket costs from a maximum of 43 percent to a minimum of 24 [fol. 397] percent, while in relation to fully distributed costs they range from a maximum of 12 percent in excess of such costs to a minimum of 4 percent below such costs.

An allowance of 8.747 cents for loss and damage expenses is somewhat excessive since the section 2 rates do not apply on any commodities with a loss and damage experience in excess of that figure. The record indicates that the actual experience of loss and damage expenses under section 2 operations has been negligible. A witness for Stanley Works of New Britain testified his company had experienced no claims for damages under the section 2 opera-

tions in connection with shipments of 155,500 pounds per week since July, 1959.¹³ On the basis of the evidence of record, a loss and damage allowance in excess of 5 cents per hundred pounds would be excessive. After an adjustment of costs to reflect this factor, the section 2 rates would exceed fully distributed costs from all origin points except Boston in connection with movements in the 40,000 and 60,000-pound brackets to East St. Louis. In those two weight brackets, the rates would fail to meet fully distributed costs by less than one cent. Under the circumstances presented in this proceeding, it is not unreasonable to conclude that the section 2 rates based on a one carload movement are compensatory. In this connection, the New Haven points out that the additional traffic flowing from the section 2 reductions is moving in box cars that otherwise would move empty, the empty movement being a mileage equivalent to 40 percent of the loaded movement. It is asserted that the average cost associated with this empty [fol. 398] movement would approximate \$50.00 per car and that the utilization of this empty movement would further diminish costs associated with this movement of additional traffic by approximately \$150.00 per car. Neither of the two cost studies presented in this proceeding includes an allowance for these two items.

It is apparent that costs, whether out-of-pocket or fully distributed, when based on a two-carload movement would exceed the yields under the corresponding section 2 rates in all instances. In this connection, the protestant contends that the respondent carriers may utilize more than one box car per consignment when loading is performed by the carriers' employees at Boston or East Cambridge, Mass., and that costs, therefore, should be computed on a two-carload basis.

Supplement 7¹⁴ of New Haven's Tariff 11-C, I. C. C. F-4501, item 400-A, provides, in part, as follows:

¹³ The transcript specifies the month of June, 1959, which is apparently in error since section 2 rates did not become effective until July 16, 1959.

¹⁴ At the time of the hearing herein, the corresponding tariff provisions of the other respondent carriers were substantially equivalent to the controlling provisions in supplement 7 of Tariff 11-C.

Note 2—Rates are subject to Rules and Regulations provided in the Uniform Freight Classification and exceptions thereto, including packing requirements except that:

* Rules 10, 12, 15, 16, 24, 29, 34, 35 and 38 of UFC will not apply.

Note 4—If upon request of shipper, rail carrier performs the loading of car (where carrier holds itself out to perform such loading under tariffs on file with the Interstate Commerce Commission) charges will apply to the weight loaded in each car and not to the entire consignment.

Under note 2 the assailed rates are subject to the rules and regulations provided in the uniform classification and exceptions thereto, except that rules 24, 29, and 34, among others, do not apply. Neither rule 14 of the Classification nor the exceptions to the classification rules was excepted. Pertinent parts of Rule 14 of the classification state:

Section 1. Carload ratings or rates apply only when a carload of freight is shipped from one station, [fol. 399] in or on one car, except as otherwise provided in Rules 24, 29, or 34, in one calendar day from midnight to midnight, by one shipper for delivery to one consignee at one destination and is loaded by shipper and unloaded by consignee. Only one bill of lading from one loading point and one freight bill shall be issued for such CL shipment. The minimum CL weight provided is the lowest weight on which the CL rating or rate will apply.

Section 2. Carload ratings or rates also apply on carload shipments (as described in Section 1), which, under tariffs lawfully on file with the Interstate Commerce Commission (on interstate traffic) and State Commissions (on intrastate traffic) are accorded additional services or privileges described below:

(a) Loading by the carrier, under the provisions of the tariff, applicable at shipping station or stopover station.

(b) Unloading by the carrier, under the provisions of the tariff, applicable at destination station or stop-over station.

Section 3. When freight is loaded in or on a car by shipper and such car is not fully loaded but is tendered as a CL shipment, the shipment will be charged for as a carload.

Standing alone, therefore, the provisions of Rule 14 would limit the application of the assailed rates to shipments loaded in or on one box car, whether the loading and unloading is performed by the shipper and consignee or by the carriers. However, item 1420 of Trunk Line-Central Territory Railroads' Tariff, Agent H. R. Hinrich's I. C. C. C-29, provides exceptions to Rules 14, 24, and 34. These exceptions, set out below, are sometimes referred to as the promiscuous loading privilege and apply on domestic freight in carloads:

At Boston, Mass., East Boston, Mass., East Cambridge, Mass., New London, Conn., and Portland, Me., when received by initial carriers at these stations when such freight is loaded into cars by initial carriers' employees:

On one consignment shipped at one time by one consignor to one consignee at one destination, which equals or exceeds the minimum carload weight provided in the Uniform Classification or tariffs governing the traffic, Rules 14, 24, and 34 of the Uniform Classification will not apply, but the CL rate will be charged on the actual weight of the entire consignment, when such weight is equal to or in excess of the [fol. 400] CL min. wt., regardless of the number of cars which may be used to load such consignment.

From Boston, Mass., East Boston, Mass., East Cambridge, Mass., New London, Conn., and Portland, Me.

Since the exceptions to rules 14, 24, and 34 allow promiscuous loading only when the carriers perform the loading or unloading services, the application of rule 14 prohibits the use of more than one box car per consignment in all

instances where the shipper loads. Under item 365 of Agent O. E. Swenson's Tariff I. C. C. No. N-3, the respondents New Haven, Boston and Maine, and New York Central hold themselves out to perform loading and unloading services for specified charges at Boston or East Cambridge. Accordingly, from those two points the exceptions to rules 14, 24, and 34 would permit the use of more than one box car per consignment when loading is performed by any of the above named carriers unless the provisions of note 4 under item 400-A provide otherwise. In this connection, the provisions of note 4 to the effect that charges will apply to the weight loaded in each car and not to the entire consignment are a nullity as no provision is made therein, as was done under item 1420, that the carload rates are subject to the minimum carload weights provided. Minimum weight provisions are provided for under rules 14, 24, and 34, but the two latter rules are expressly excepted from application by note 2, and rule 14, insofar as it limits shipments loaded or unloaded by the carriers to specified carload minimum weights, is superseded by the exceptions to rules 14, 24, and 34. In order for the provisions of Note 4 to become effective, they would have to rely upon the minimum weight provisions set forth in the exceptions to rules 14, 24, and 34. Therefore, the latter provisions would have to prevail over the former. Accordingly, under the pertinent tariff provisions of the New Haven, Boston and Maine, and New York Central in effect at the date of hearing, more than one box car could be utilized at Boston [fol. 401] or East Cambridge when such carriers perform loading services at those points.

However, since the date of hearing the New Haven and Boston and Maine have revised their respective tariffs¹⁵ by further publications, and official notice thereof is hereby taken. In this connection, a witness for the New Haven testified that the section 2 rates were published with the

¹⁵ The New Haven published Supplement 11 to tariff 11-C, effective December 16, 1959, which cancels supplements 7 and 10 thereto, whereas the Boston and Maine cancelled tariff 5000-B, I. C. C. A3247 by the publication in lieu thereof of tariff 5000-C, I. C. C. A3262 and supplement 1 thereto, effective February 27, 1960. The pertinent provisions of both tariffs covering the involved rates were and presently are substantially the same.

intention that they were to apply only on shipments loaded in or on one box car, but that if any doubt to the contrary arose, the New Haven would revise its tariff to remedy this discrepancy. Supplement 11 to the New Haven's tariff 11-C, item 400-B, reflects the following revisions of or additions to the previous provisions of supplement 7, item 400-A:

Note 2. Rates are subject to Rules and Regulations provided in the Uniform Freight Classification and exceptions thereto, including packing requirements except that:

Rules 10, 12, 15, 16, 24, 29, 34, 35 and 38 of UFC *or exceptions thereto* will not apply. (Italics supplied.)

Note 6. *The Exception to Rule 14 of UFC as published in Item 1420 of TL-CTRTB (Hinsch Series) Freight Tariff E-2009-C, I. C. C. C-29 will not apply.* (Italics supplied.)

Note 2, as revised, expressly excepts from application the exceptions to rules 24 and 34, among others, and under the provisions of note 6 the exception to rule 14 of the classification does not apply. Accordingly, as to the New Haven and Boston and Maine, rule 14, therefore, would apply without limitations and thereby limit the application of carload rates to shipments loaded in or on one box car, whether [fol. 402] loading is performed by the carriers or otherwise. Under the corresponding tariff provisions of the New York Central, however, the exceptions to rules 14, 24, and 34 of the classification still apply. Under Item 365 of agent O. E. Swenson's I. C. C. No. N-3, the New York Central holds itself out to perform loading or unloading services at Boston or East Cambridge, and when it loads from those two points, more than one box car per consignment may be utilized. As to the New York Central, therefore, the section 2 rates from those two points fail to meet out-of-pocket costs and, consequently, the rates from those points would not be compensatory. The section 2 rates, however, based on a one carload movement from all points have been shown to be compensatory.

The principal witness for protestant points out that the out-of-pocket costs as shown in Appendix C cover only 80 percent of the total operating expenses, rents and taxes,

plus a 4 percent return on 100 percent of the depreciated investment in equipment, as well as a 4 percent return on 50 percent of the depreciated investment in the roadbed. The remaining 20 percent of total operating expenses, plus the passenger and less-than-carload deficits, and the remaining 4 percent on the 50 percent depreciated investment in the roadbed, constitute the so-called burden that various categories of traffic must contribute if the carrier is to realize a real profit. The protestant has formulated on a statistical basis certain data showing the revenue-bearing characteristics of different categories of freight traffic handled in official territory during 1957, and on the New Haven during 1958, the details of which are shown in its Exhibit 34 and reproduced herein as Appendix D. The compilations in Appendix D are computed on the basis of statistics taken [fol. 403] from the Commission's cost finding section Statement No. 2-59, which was based on a one percent waybill study for 1957, covering traffic moving solely within official territory. The protestant's data reflects that 25 percent of the tons terminated in official territory in 1957 was manufactures and miscellaneous traffic, which earned 43.2 percent of total revenue and accounted for 63.9 percent of the total revenue contribution to the so-called burden. Revenue from this traffic exceeded fully distributed costs by 29 percent, whereas forwarder traffic was the only other category that contributed revenue sufficient to cover fully distributed costs, and that by only 2 percent. The total revenue from all freight handled in official territory failed to cover fully distributed costs by 2 percent. Since no figures were available showing actual expenses of the New Haven during 1958, the ratio of revenue to out-of-pocket costs for official territory was applied in constructing the percent of contribution attributed to each group of traffic on the New Haven. On this basis, the computation shows that manufactures and miscellaneous traffic on the New Haven earned 64.8 percent of total revenue and made a revenue contribution of 83.6 percent to the burden. The protestant urges that these figures clearly demonstrate the vital necessity of obtaining from manufactures and miscellaneous traffic approximately two-thirds of the contribution which the respondent carriers need to provide for the payment of all of their operating expenses and fixed

charges. In this connection, it is indicated that total revenue for the New Haven in 1958 failed to meet fully distributed costs by an amount in excess of \$4,000,000.

While these computations illustrate the importance of manufactures and miscellaneous traffic to the respondents, [fol. 404] these figures do not give consideration to competitive circumstances surrounding the movement of this traffic. In this connection, respondent New Haven has shown that under the section 2 rates it has shipped approximately 4,000,000 pounds of additional traffic, and the record indicates that the volume of this traffic will increase substantially in the future. Under these circumstances, it is reasonable to conclude that the total revenue contribution from manufactures and miscellaneous traffic will increase by reason of the section 2 rates.

Respondents place considerable emphasis upon the principles enunciated by the Commission in the recent paint case, *Paint and Related Articles in Official Territory*, 308 I. C. C. 439. In that proceeding the rail carriers in official territory proposed reduced boxcar rates on paints and related articles between all points served by rail in that territory. The proposed rates, subject to graduated minima weights beginning with 30,000 pounds, represented drastic reductions under respondents' present rates, some being as low as 17.4 percent of first-class on the lower weight bracket, and 13.1 percent on the highest weight bracket. In approving those rates the Commission held that they were reasonably compensatory and needed by the respondents to attract traffic to their rails, and would not constitute a destructive competitive practice in contravention of the national transportation policy. That case, however, must be distinguished from the instant proceeding in that the rates therein were limited solely in application to a very small segment of articles in the Uniform Classification. Here, however, the section 2 rates apply on virtually all articles, with some minor exceptions, in the classification. Consequently, the rates approved in the *Paint* case are not [fol. 405] as far-reaching in scope as to have such a pronounced effect on the entire rate structure or classification as would be the case with the section 2 rates here under investigation.

The protestant contends that all-commodity rates less than 45 percent of first-class are unduly low, citing *De-mountable Motortruck Bodies, Loaded or Empty*, 305 I. C. C. 161, and *All Freight, Cicero, Ill., and Dayton's Bluff, Minn.*, 306 I. C. C. 23. While this principle has been followed by the Commission in some instances, depending upon particular circumstances involved, the evidence in the instant proceeding is persuasive that if the rail all-commodity rates are to be competitive with corresponding motor carrier rates they must be at a level below 45 percent of first-class. Any contention that the railroads should not be permitted to establish reduced rates, although such rates were shown to be compensatory, because they would be substantially lower than the present rail and truck rates and would therefore constitute an unfair destructive competitive practice in violation of the national transportation policy, was answered by the Commission in the *Paint* case, supra, where, at page 449 therein it is stated that:

In dealing with competitive rates, section 15(a)(3) prohibits us from holding the rates of a carrier to a particular level to protect the traffic of another carrier, unless the subject rates are in contravention of the objectives of the national transportation policy.

The mere reduction of a rate does not per se constitute an unfair or destructive practice; nor does it follow that because a rate reduction is found to violate a provision of the act that it is therefore contrary to that policy. It cannot, therefore, be concluded from the evidence in this proceeding that the section 2 rates, as such, constitute an unfair or destructive competitive practice in contravention of the [fol. 406] national transportation policy.

However, section 1(6) of the act requires that all common carriers subject to the provisions of part I of the act establish, observe, and enforce just and reasonable "classifications of property for transportation". In *All Freight to Pacific Coast*, 238 I. C. C. 327 (affirmed in 248 I. C. C. 73), the Commission found that reduced all commodity rates on all kinds of freight, with certain exceptions, in straight or mixed carloads, subject to rule 24 of the governing classification, but not subject to rule 10 or rule

34, were not unlawful. The rates in that case ranged from 49 to 51.4 percent of first class. While the boxcar rates in the instant proceeding also apply to straight or mixed carloads and are not made subject to rule 10, they are on a much lower level, ranging from 19 to 45 percent of first-class. As heretofore stated, the Commission in *All Commodities, Mixed Carloads, in Official Territory*, supra, has not approved all-freight boxcar rates below 45 percent of first-class except in extraordinary circumstances, not here present. The level of all-freight rates in that case was approximately 15 percent of first-class.

While the all-commodity boxcar rates here under investigation are fully compensatory, with the exception of the New York Central's rates from Boston and East Cambridge, as hereinabove discussed, and have been shown to yield total revenues comparable to those accruing under previous rates, nevertheless, they are on an extremely low level which represent the highest level of rates on all commodities in the Uniform Freight Classification not excluded thereunder, and would thereby supersede substantially all rail rates where such rates resulted in higher charges. Consequently, since these rates, dropping as low as 19 [fol. 407] percent of first-class, are not made subject to a mixing rule, and are made without regard to the value of the articles transported or other usual transportation considerations, the examiner finds, and so concludes, that they tend to vitiate, and thereby undermine, the uniform freight classification in violation of section 1(6) of the act, and would thereby inevitably result in jeopardizing the entire rate structure.

For the reasons hereinabove stated, the Commission should find that the section 2 rates here under investigation have not been shown to be just and reasonable.

Requested findings not specifically discussed in this report nor reflected in the findings or conclusions herein have been considered and found not to warrant any particular comment.

It is recommended that the appended order be entered and the proceedings discontinued.

By Wm. J. Kane, Hearing Examiner.

Wm. J. Kane.

[fol. 408]

I. & S. DOCKET No. 7131
APPENDIX ACOMPARISON OF SECTION 2 RATES WITH CORRESPONDING
SECTION 1 RATES AND THE PERCENTAGE EACH RATE BEARS
TO THE FIRST-CLASS RATE FROM AND TO SELECTIVE POINTSTo Chicago, Ill., Gibson and Hammond, Ind.

| From: | Section 2 Rates and Minimum Weights | | | | | | | | | | Section 1 | | | |
|--------------------|-------------------------------------|----------------|--------|----------------|--------|----------------|--------|----------------|--------|----------------|-----------|----------------|---------------|----------------|
| | 20,000 | £ ¹ | 30,000 | £ ¹ | 40,000 | £ ¹ | 50,000 | £ ¹ | 60,000 | £ ¹ | 70,000 | £ ¹ | Rates | Minimum |
| | | | | | | | | | | | | | 30,000 pounds | £ ¹ |
| Boston, Mass. | 213 | 45 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19 | 204 | 45.1 |
| New Haven, Conn. | 207 | 45 | 150 | 32.6 | 115 | 25 | 104 | 22.6 | 92 | 20 | 87 | 18.9 | 202 | 43.9 |
| Providence, R. I. | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20 | 91 | 18.9 | 204 | 42.4 |
| Springfield, Mass. | 204 | 45 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19 | 202 | 44.6 |

To East St. Louis, Ill., and St. Louis, Mo.


| | | | | | | | | | | | | | | |
|--------------------|-----|------|-----|------|-----|----|-----|------|-----|------|-----|------|-----|------|
| Boston, Mass. | 238 | 45 | 172 | 32.5 | 132 | 25 | 119 | 22.5 | 106 | 20 | 101 | 19.1 | 233 | 44.0 |
| New Haven, Conn. | 232 | 45 | 168 | 32.6 | 129 | 25 | 116 | 22.5 | 103 | 20 | 98 | 19 | 225 | 43.6 |
| Providence, R. I. | 242 | 45.1 | 175 | 32.6 | 134 | 25 | 121 | 22.5 | 107 | 19.9 | 102 | 19 | 233 | 43.4 |
| Springfield, Mass. | 229 | 45.1 | 165 | 32.5 | 127 | 25 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 |

¹Percentage of first class rate reflected by rate in preceding column.

[fol. 408]

I. & S. DOCKET No. 7131
APPENDIX A

[fol. 409]

I. & S. DOCKET No. 7131
APPENDIX B(See opposite) 

**COST DATA PRESENTED BY NEW HAVEN SHOWING COMPARISON OF ASSAILED RATES WITH OUT-OF-POCKET AND FULLY
DISTRIBUTED COSTS FROM SELECTED ORIGIN POINTS TO CHICAGO AND ST. LOUIS, MO., AND EAST ST. LOUIS, ILL.**

| <u>To Chicago</u> | | | | | | | | | | | | | | | | | | | |
|---|---------------|---------------|-------------|-------------|---------------|-------------|-------------|---------------|-------------|-------------|---------------|-------------|-------------|---------------|-------------|-------------|---------------|-------------|-------------|
| <u>From:</u> | <u>Docket</u> | <u>20,000</u> | | | <u>30,000</u> | | | <u>40,000</u> | | | <u>50,000</u> | | | <u>60,000</u> | | | <u>70,000</u> | | |
| | <u>28300</u> | <u>O.P.</u> | <u>F.D.</u> | <u>Rate</u> | <u>O.P.</u> | <u>F.D.</u> | <u>Rate</u> | <u>O.P.</u> | <u>F.D.</u> | <u>Rate</u> | <u>O.P.</u> | <u>F.D.</u> | <u>Rate</u> | <u>O.P.</u> | <u>F.D.</u> | <u>Rate</u> | <u>O.P.</u> | <u>F.D.</u> | <u>Rate</u> |
| | <u>miles</u> | <u>Cost</u> | <u>Cost</u> | | <u>Cost</u> | <u>Cost</u> | | <u>Cost</u> | <u>Cost</u> | | <u>Cost</u> | <u>Cost</u> | | <u>Cost</u> | <u>Cost</u> | | <u>Cost</u> | <u>Cost</u> | |
| Boston, Mass. | 973 | 146.9 | 171.4 | 213: | 102.4 | 127.0 | 154: | 80.3 | 104.8 | 118: | 67.0 | 91.5 | 106: | 58.1 | 82.6 | 95: | 51.7 | 76.3 | 90 |
| New Haven, Conn. | 921 | 140.8 | 164.2 | 207: | 98.2 | 121.6 | 150: | 76.9 | 100.3 | 115: | 64.2 | 87.6 | 104: | 55.7 | 79.0 | 92: | 49.5 | 72.9 | 87 |
| Providence, R. I. | 978 | 147.4 | 172.1 | 216: | 102.9 | 127.5 | 156: | 80.6 | 105.3 | 120: | 67.3 | 91.9 | 108: | 58.4 | 82.9 | 96: | 51.9 | 76.6 | 91 |
| Springfield, Mass. | 889 | 137.1 | 159.8 | 204: | 95.6 | 118.3 | 147: | 74.9 | 97.6 | 113: | 62.4 | 85.1 | 102: | 54.2 | 76.8 | 91: | 48.2 | 70.9 | 86 |
| <u>To St. Louis, Mo. and East St. Louis, Ill.</u> | | | | | | | | | | | | | | | | | | | |
| Boston, Mass. | 1174 | 170.3 | 199.8 | 238: | 118.9 | 147.9 | 172: | 93.2 | 122.1 | 132: | 77.8 | 106.7 | 119: | 67.6 | 96.5 | 106: | 60.2 | 89.1 | 101 |
| New Haven, Conn. | 1122 | 164.2 | 191.9 | 232: | 114.7 | 142.5 | 168: | 89.9 | 117.6 | 129: | 75.0 | 102.8 | 116: | 65.2 | 92.9 | 103: | 58.0 | 85.8 | 98 |
| Providence, R.I. | 1179 | 170.8 | 199.8 | 242: | 119.3 | 148.3 | 175: | 93.5 | 122.4 | 134: | 78.1 | 107.1 | 121: | 67.8 | 96.8 | 107: | 60.5 | 89.5 | 102 |
| Springfield, Mass. | 1089 | 160.4 | 187.4 | 229: | 112.0 | 139.0 | 165: | 87.7 | 114.8 | 127: | 73.2 | 100.2 | 114: | 63.6 | 90.6 | 102: | 56.7 | 83.7 | 97 |

:88

[fol. 410]

1. & S. DOCKET No. 7131
APPENDIX C

(See opposite) **L**

COST DATA PRESENTED BY PROTESTANT SHOWING COMPARISON OF ASSAILED RATES WITH OUT-OF-POCKET AND FULLY DISTRIBUTED COSTS FROM SELECTED ORIGIN POINTS TO CHICAGO AND EAST ST. LOUIS, ILL.

To Chicago, Ill.¹

| From: | Short Line Miles | 20,000 | | | 30,000 | | | 40,000 | | | 50,000 | | | 60,000 | | | 70,000 | | |
|--------------------|------------------------|--------------|--------------|------|--------------|--------------|------|--------------|--------------|------|--------------|--------------|------|--------------|--------------|------|--------------|--------------|------|
| | | O.P. Cost | F.D. Cost | Rate | O.P. Cost | F.D. Cost | Rate | O.P. Cost | F.D. Cost | Rate | O.P. Cost | F.D. Cost | Rate | O.P. Cost | F.D. Cost | Rate | O.P. Cost | F.D. Cost | Rate |
| Boston, Mass. | 973 | 161.9 | 187.7 | 213 | 115.6 | 141.5 | 154 | 92.5 | 118.3 | 118 | 78.6 | 104.5 | 106 | 69.4 | 95.2 | 95 | 62.8 | 88.6 | 90 |
| New Haven, Conn. | 921 | 155.5 | 180.1 | 207 | 111.1 | 135.8 | 150 | 88.9 | 113.6 | 115 | 75.6 | 100.3 | 104 | 66.8 | 91.4 | 92 | 60.5 | 85.1 | 87 |
| Providence, R. I. | 978 | 162.5 | 188.5 | 216 | 116.1 | 142.0 | 156 | 92.8 | 118.8 | 120 | 78.9 | 104.9 | 108 | 69.6 | 95.6 | 96 | 63.0 | 89.0 | 91 |
| Springfield, Mass. | 889 | 151.5 | 175.4 | 204 | 108.3 | 132.3 | 147 | 86.7 | 110.6 | 113 | 73.8 | 97.7 | 102 | 65.2 | 89.1 | 91 | 59.0 | 82.9 | 86 |

To East St. Louis, Ill.¹

| | | | | | | | | | | | | | | | | | | | |
|--------------------|------|-------|-------|-----|-------|-------|-----|-------|-------|-----|------|-------|-----|------|-------|-----|------|-------|-----|
| Boston, Mass. | 1174 | 186.7 | 217.2 | 238 | 133.1 | 163.5 | 172 | 106.2 | 136.7 | 132 | 90.2 | 120.6 | 119 | 79.4 | 109.9 | 106 | 71.8 | 102.2 | 101 |
| New Haven, Conn. | 1122 | 180.3 | 209.6 | 232 | 128.6 | 157.8 | 168 | 102.7 | 131.9 | 129 | 87.2 | 116.4 | 115 | 76.8 | 106.1 | 103 | 69.5 | 98.7 | 98 |
| Providence, R. I. | 1179 | 187.3 | 217.9 | 242 | 133.5 | 164.1 | 175 | 106.6 | 137.1 | 134 | 90.5 | 121.0 | 121 | 79.7 | 110.3 | 107 | 72.0 | 102.6 | 102 |
| Springfield, Mass. | 1089 | 176.2 | 204.7 | 229 | 125.7 | 154.2 | 165 | 100.4 | 128.9 | 127 | 85.3 | 113.8 | 114 | 75.2 | 103.7 | 102 | 68.0 | 96.5 | 97 |

To Chicago, Ill.²

| | | | | | | | | | | | | | | | | | | | |
|--------------------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|----|-------|-------|----|
| Boston, Mass. | 973 | 295.2 | 321.1 | 213 | 204.5 | 230.4 | 154 | 159.1 | 184.9 | 118 | 131.9 | 157.8 | 106 | 113.7 | 139.6 | 95 | 100.8 | 126.7 | 90 |
| New Haven, Conn. | 921 | 283.1 | 307.7 | 207 | 196.2 | 220.9 | 150 | 152.7 | 177.3 | 115 | 126.7 | 151.3 | 104 | 109.2 | 133.9 | 92 | 96.9 | 121.5 | 87 |
| Providence, R. I. | 978 | 296.4 | 322.4 | 216 | 205.3 | 231.3 | 156 | 159.7 | 185.7 | 120 | 132.4 | 158.4 | 108 | 114.2 | 140.1 | 96 | 101.2 | 127.2 | 91 |
| Springfield, Mass. | 889 | 275.6 | 299.5 | 204 | 191.1 | 215.0 | 147 | 148.7 | 172.6 | 113 | 123.4 | 147.3 | 102 | 106.4 | 130.4 | 91 | 94.4 | 118.3 | 86 |

To East St. Louis, Ill.²

| | | | | | | | | | | | | | | | | | | | |
|--------------------|------|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|
| Boston, Mass. | 1174 | 342.2 | 372.7 | 238 | 236.8 | 267.2 | 172 | 183.9 | 214.4 | 132 | 152.3 | 182.8 | 119 | 131.2 | 161.6 | 106 | 116.2 | 146.6 | 101 |
| New Haven, Conn. | 1122 | 330.1 | 359.3 | 232 | 228.4 | 257.7 | 168 | 177.5 | 206.8 | 129 | 147.1 | 176.3 | 116 | 126.7 | 155.9 | 103 | 112.2 | 141.4 | 98 |
| Providence, R. I. | 1179 | 343.4 | 374.0 | 242 | 237.6 | 268.1 | 175 | 184.5 | 215.1 | 134 | 152.8 | 183.4 | 121 | 131.6 | 162.2 | 107 | 116.5 | 147.1 | 102 |
| Springfield, Mass. | 1089 | 322.4 | 350.9 | 229 | 223.1 | 251.6 | 165 | 173.4 | 201.9 | 127 | 143.7 | 172.2 | 114 | 123.8 | 152.3 | 102 | 109.7 | 138.2 | 97 |

¹Based on shipments loaded in one box car.

²Based on shipments loaded in two box cars.

[fol. 411]

I. & S. DOCKET No. 7131
APPENDIX D(See opposite) 

Revenue Bearing Characteristics of Traffic Handled in Official Territory
During 1957, and on New Haven Railroad During Year 1958

| Line No. | I T E M (1) | Products of Agriculture (2) | Animals & Products (3) | Products of Mines (4) | Products of Forests (5) | Manufactures & Miscellaneous (6) | Forwarder Traffic (7) | All Commodities (8) |
|---|---------------------------------------|--------------------------------------|---------------------------------|--------------------------------|----------------------------------|---|-----------------------------|---------------------------|
| MOVEMENTS WITHIN OFFICIAL TERR. - 1957 | | | | | | | | |
| 1. | Tons Terminated -- (Millions) | 34.4 | 2.8 | 444.2 | 6.1 | 163.3 | 1.2 | 652.0 |
| 2. | Revenue ----- (Millions) | \$191.6 | \$ 51.5 | \$1,328.4 | \$ 27.3 | \$1,246.5 | \$ 39.3 | \$2,884.6 |
| 3. | Contribution ----- (Millions) | \$ 37.3 | \$ 2.1 | \$ 224.8 | \$ 2.8 | \$ 480.2 | \$ 4.3 | \$ 751.5 |
| 4. | Ratio-Rev. to Out-Of-Pocket Cost (%) | 124 | 104 | 120 | 111 | 163 | 112 | 135 |
| 5. | Ratio-Rev. to Fully Distrib. Cost (%) | 94 | 92 | 80 | 87 | 129 | 102 | 98 |
| 6. | Percent of Tons Terminated | 5.3 | .5 | 68.1 | .9 | 25.0 | .2 | 100.0 |
| 7. | Percent of Revenue | 6.6 | 1.8 | 46.1 | .9 | 43.2 | 1.4 | 100.0 |
| 8. | Percent of Contribution | 5.0 | .3 | 29.8 | .4 | 63.9 | .6 | 100.0 |
| NEW HAVEN RR. - 1958 | | | | | | | | |
| 9. | Total Tons Carried (Millions) | 1.9 | .6 | 5.1 | .8 | 10.8 | .3 | 19.5 |
| 10. | Revenue ----- (Millions) | \$ 6.8 | \$ 4.2 | \$ 10.9 | \$ 2.5 | \$ 50.4 | \$ 3.0 | \$ 77.8 |
| 11. | Contribution ----- (Millions) | \$ 1.3 | \$.2 | \$ 1.8 | \$.2 | \$ 19.5 | \$.3 | \$ 23.3 |
| 12. | Percent of Tons Carried | 9.7 | 3.1 | 26.2 | 4.1 | 55.4 | 1.5 | 100.0 |
| 13. | Percent of Revenue | 8.7 | 5.4 | 14.0 | 3.2 | 64.8 | 3.9 | 100.0 |
| 14. | Percent of Contribution | 5.6 | .9 | 7.7 | .9 | 83.6 | 1.3 | 100.0 |

[fol. 412]

Recommended by Wm. J. Kane,
Hearing Examiner

(Signature) Wm. J. Kane

ORDER

At a Session of the Interstate Commerce Commission,
Division , held at its office in Washington, D. C., on
the day of A. D. 1960.

INVESTIGATION AND SUSPENSION DOCKET No. 7131

ALL COMMODITIES—FROM NEW ENGLAND TO CHICAGO
AND ST. LOUIS

No. 33185

ALL FREIGHT—CONN., MASS. & R. I. TO CHICAGO & ST. LOUIS

No. 33193

FREIGHT, ALL KINDS—MAINE TO CHICAGO & E. ST. LOUIS, ILL.

No. 33202

ALL FREIGHT RATES FROM NEW ENGLAND TO ILL., IND., MO.

No. 33269

ALL ARTICLES—FROM WINDSOR, VT., TO E. ST. LOUIS, ILL.,
& ST. LOUIS, MO.

It appearing. That by orders dated March 11, August 28, September 11, September 22, and November 19, 1959, the Commission entered upon an investigation concerning the lawfulness of the rates, charges, rules, regulations or practices contained in certain schedules described in said orders;

It further appearing. That a full investigation of the matters and things involved in these proceedings has been made, and that the examiner has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That respondents be, and they are hereby, notified and required to cancel the schedules under investigation within 30 days from the date this recommended order becomes the order of the Commission and becomes effective pursuant to the provisions of section 17(5) of the Interstate Commerce Act, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed by the Commission under section 6 of the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

[fol. 413] By the Commission, division

Harold D. McCoy,
Secretary.

(Seal)



[fol. 540]

BEFORE THE INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET No. 7131¹

ALL COMMODITIES—

FROM NEW ENGLAND TO CHICAGO AND ST. LOUIS

Reduced all-freight rates, in straight or mixed shipments in box cars, from points in New England to Chicago and East St. Louis, Ill., Gibson and Hammond, Ind., and St. Louis, Mo., found just and reasonable. Proceedings discontinued.

John T. Collins, John A. Daily, J. W. Grady, Thomas P. Hackett, Eugene E. Hunt, William Q. Keenan, Scott W. Scully, and William J. Taylor for respondents.

Homer S. Carpenter, John S. Fessenden, and James E. Haydon for protestants.

REPORT OF THE COMMISSION—Decided February 10, 1961

Division 2, Commissioners FREAS, McPHERSON, and WEBB

By Division 2:

These proceedings are related, were heard on a common record, and will be disposed of in one report. Exceptions to the report and order recommended by the examiner were filed by the respondents and the protestants, and both parties replied. Our conclusions differ from those recommended. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

In the title proceeding, by schedules filed to become effective on March 16, 1959, The New York Central Railroad

¹ This report embraces also No. 33135, All Freight—Conn., Mass. & R. I. to Chicago & St. Louis; No. 33193, Freight, All Kinds—Maine to Chicago & E. St. Louis, Ill.; No. 33202, All-Freight Rates from New England to Ill., Ind., Mo.; and No. 33269, All Articles—From Windsor, Vt., to E. St. Louis, Ill., & St. Louis, Mo.

Company and the Boston and Maine Railroad proposed to establish reduced boxcar rates² on all freight, with some exceptions,³ in straight or mixed carloads, from points in New England territory to Chicago and East St. Louis, Ill. Gibson and Hammond, Ind., and St. Louis, Mo. Upon protest of the Eastern Central Motor Carriers Association, Inc., and the Middle Atlantic Conference, association of [fol. 541] motor common carriers, and Chicago Express, Inc., and Law and Ingham Transportation Company, Inc., motor common carriers, the operation of the schedules was suspended to and including October 15, 1959. By a subsequent order, on July 6, 1959, the suspension order was vacated insofar as it suspended the operation of the schedules designated therein, but the investigation was continued.

No. 33185 is an investigation instituted by the Commission, by order dated August 28, 1959, into the lawfulness of the all-freight rates published by The New York, New Haven and Hartford Railroad Company, called the New Haven, from additional points in New England to the same destinations included in the title proceeding. In No. 33193, an investigation instituted by the Commission on September 11, 1959, the lawfulness of the all-freight rates published by the Maine Central Railroad Company from Deering Junction, Portland, and Westbrook-Cumberland, Maine, to Chicago and East St. Louis, is in issue. However, those rates expired on March 10, 1960, and they will not be further considered. No. 33202 is an investigation instituted by the Commission on September 22, 1959, into the lawfulness of the all-freight rates published by the Boston & Maine from points in Massachusetts and Windsor, Vt., to St. Louis and certain points in Illinois and Indiana. In No. 33269, an investigation instituted by order of November 19, 1959, the lawfulness of the all-freight rates published by the Central Vermont Railway, Inc., from Windsor to

² Rates, charges, and costs are stated per 100 pounds.

³ Perishable freight, livestock, military equipment, explosives, scientific equipment, and every commodity with a loss and damage expense in excess of 5.747 cents per 100 pounds as indicated in public statement No. 5-58 prepared by our Cost Finding Section.

East St. Louis and St. Louis, is before us. For convenience, the rates under investigation will be called the proposed rates. The only respondent which introduced evidence in support of the proposed schedules was the New Haven. On brief, The New York Central, Boston & Maine, and Maine Central state that their only reason for joining the proposal is to remain in a competitive position with the New Haven.

The proposed rates are intended to meet the plan III trailer-on-flatcar rates published by the respondents from and to these same points. The plan III rates, which do not include pickup or delivery service, from Boston to Chicago, representative points, together with the proposed rates and the percentages of the first-class rates reflected by them, are shown in table 1:

[fol. 542]

TABLE 1

| From Boston, Mass., to Chicago, Ill. | Plan III rates ² | Proposed rates | Percent of first class |
|---|--------------------------------|-------------------|---------------------------|
| Minimum weight | | | |
| Pounds | | | |
| 20,000 ¹ | \$2.47 | \$2.13 | 45.0 |
| 30,000 ¹ | 1.65 | 1.54 | 32.6 |
| 40,000 | 1.24 | 1.18 | 24.9 |
| 50,000 | .99 | 1.06 | 22.4 |
| 60,000 | .82 | .95 | 20.1 |
| 70,000 | .71 | .90 | 19.0 |

¹ Under the proposed schedules, shipments of 20,000 or 30,000 pounds are limited to box cars 40 feet 7 inches in length or less. If larger cars are used for these shipments, the 40,000-pound rates apply.

² Plan III rates are published as charges per maximum consignment of 70,000 pounds in no more than two trailers on one flat car. The shipper owns or leases the trailers.

The present all-freight boxcar rate from Boston to Chicago is \$2.04, minimum 30,000 pounds. Like the plan III rates, it is subject to a mixing rule which requires that the lading consist of at least two commodities, no one of which shall exceed 60 percent of the total weight of the shipment. The proposed rates are not subject to a mixing rule, do not

apply on import, export, or ex-water traffic, and do not include in-transit or stop-off privileges. They apply from shippers' rail sidings as well as from the railroad terminal. The present and the proposed rates alternate with one another, depending upon which produces lower charges on a particular consignment. The protestants' all-freight rate from Boston to Chicago is \$2, minimum 20,000 pounds, and applies only on mixed shipments consisting of at least five commodities. No one commodity may exceed 50 percent of the total weight of the consignment, or of the minimum weight, whichever is greater.

The New Haven has been unable to compete effectively for the plan III traffic because of its shortage of cars large enough to handle two trailers, and because of certain other operational difficulties.⁴ Within two months after the establishment of the plan III service on July 21, 1958, the New Haven lost the equivalent of over 400 boxcar loads of this traffic to the New York Central. Its traffic is unbalanced in favor of the eastbound movements. Every month it dispatches about 150 empty box cars to Chicago and St. Louis, [fol. 543] with a capacity of about 3 million tons on an annual basis.

A survey was made by the New Haven of its plan III traffic moving from Providence, R. I., New Haven, Conn., and Boston to Chicago during August 1959. There were 44 shipments in 88 trailers on 58 flat cars, which yielded total revenue of \$23,241.11. If the revenue had been calculated on the basis of the proposed rates, it would have totaled \$25,075.56. Only three of these shipments weighed less than 40,000 pounds.

The New Haven also made a survey of all of the traffic moving from origins on its lines at the proposed rates to these destinations on and between July 16 and September 30, 1959. There were 364 shipments, 186 of which originated at Boston. The study shows the total revenues resulting from the proposed rates, and what the revenues would have been when calculated on the basis of the present all-freight boxcar rates. The shipments are segregated into (a) traffic that previously moved in box cars, (b) traffic that previ-

⁴ See *All Commodities, Mixed Carloads, in Official Territory*, 306 I.C.C. 29.

ously moved partly by rail and partly by other modes of transportation, and (c) traffic that previously moved by other than rail transportation, as indicated in table 2:

TABLE 2

| Group | No. of cars | Rated weight Pounds | Revenue | Average weight per car Pounds | Average revenue per car |
|---------------------------------|-------------|------------------------|--------------|-------------------------------------|----------------------------|
| At the proposed rates | | | | | |
| (a) | 255 | 12,296,077 | \$144,709.86 | 48,220 | \$567.49 |
| (b) | 67 | 3,725,627 | 38,182.03 | 55,606 | 569.88 |
| (c) | 42 | 2,430,664 | 24,522.26 | 57,873 | 583.89 |
| Total | 364 | 18,452,368 | \$207,414.15 | 50,693 | \$569.82 |
| At the all-freight boxcar rates | | | | | |
| (a) | 255 | 11,648,857 | \$178,529.42 | 45,682 | \$700.11 |
| (b) | 67 | 3,621,435 | 57,511.39 | 54,051 | 858.37 |
| (c) | 42 | 2,359,062 | 33,756.22 | 56,168 | 803.71 |
| Total | 364 | 17,629,354 | \$269,797.03 | 48,432 | \$741.20 |

The study shows also that 50 percent of the group (b) traffic formerly moved at the present all-freight rates, and yielded \$28,755.69 in revenue. Accordingly, the traffic previously handled by the New Haven would have yielded total [fol. 544] revenue of \$178,529.42 and \$28,755.69, or \$207,285.11, which is substantially the same as the total revenue of \$207,414.15 under the proposed rates from all of the shipments. In analyzing table 2, the protestants point out that for every 30,000 pounds of traffic diverted from the motor carriers by the proposed rates, 100,000 pounds is diverted from the present all-freight boxcar movements. The evidence indicates that freight forwarders have availed themselves of the proposed rates more extensively than shipper associations and individual shippers, although the New Haven's freight-forwarder traffic has generally declined in recent years.⁵

⁵ Between 1947 and 1958, the New Haven's freight-forwarder traffic decreased from 222,140 to 218,565 tons annually, and the average load per car fell from 17.12 to 9.61 tons.

The New Haven is particularly anxious to attract manufactured goods and miscellaneous traffic, which produced 61.5 percent of its total revenues in 1958, but which has declined in volume by about 50 percent during the last 10 years. Some of this traffic was lost to the motor carriers. A shipper of hardware at New Britain, Conn., finds the proposed rates particularly advantageous for pool-car shipments to Chicago. Formerly, 91 percent of this traffic moved as less-than-truckload or less-than-carload shipments directly to the consignee, and the remainder by freight forwarder. Now both the less-than-carload and less-than-truckload traffic moves in pool cars to a warehouse near Chicago. The total weekly volume has increased from 93,000 to 155,000 pounds at the proposed rates, resulting in an increase in the average boxcar loading from 59,386 to 75,000 pounds.

A shipper of electrical appliances at New Britain chooses between rail or motor-carrier service on the basis of the rate level. It has shipped these commodities to Chicago and St. Louis in pool-car loads at the proposed rates since their establishment on July 16, 1959. On and between March 26 and July 15, 1959, it used motor carriers exclusively, and prior to that period the railroads handled all of the traffic. Formerly, the carloads averaged 30,000 pounds, but under the proposed rates the average has been 44,000 pounds. Several other shippers have been using the proposed rates for pool-car shipments, for which the average load has likewise been somewhat greater than previously under the all-freight boxcar rates.

[fol. 545] According to the Chicago Shippers Association, its members used rail service exclusively both before and after the proposed rates became effective. However, it states that if the proposed rates are canceled, all of this traffic will be handled by freight forwarders, whose rates are somewhat lower than the present all-freight rates.

A shipper of brass-milled products at Waterbury, Conn., abandoned plans to use private carriage for some of its traffic after the proposed rates went into effect.

All of the shippers who appeared in support of the respondents are on railroad sidings, and thus do not have to pay pickup and delivery charges as they do under the plan III rates. Moreover, plan III service entails a trailer rental of \$7.50 per day. On a hundredweight basis, the protestants have added these additional expenses to the plan III rates, and compared them with the proposed rates, as indicated in table 3:

TABLE 3

| Boston, Mass., to Chicago, Ill. | Proposed rates | Total plan III charges ¹ |
|------------------------------------|-------------------|--|
| Minimum weight | | |
| Pounds | | |
| 20,000 | \$2.13 | \$2.842 |
| 30,000 | 1.54 | 1.902 |
| 40,000 | 1.18 | 1.430 |
| 50,000 | 1.06 | 1.148 |
| 60,000 | .95 | .954 |
| 70,000 | .90 | .822 |

¹ The protestants obtained pickup and delivery charges from statements Nos. 3-57 and 3-58, prepared by our Cost Finding Section.

Obviously, the rate comparisons in table 3 are unrealistic for shippers who are not located on railroad sidings, and must therefore pay for pickup or delivery service.

The respondents' tariffs prohibit the use of more than one box car for one consignment moving at the proposed rates. The New Haven introduced a study of both the out-of-pocket and fully-distributed costs of handling this traffic in single boxcar shipments from Boston to Chicago, among other points, based on statement No. 5-58 of our Cost Finding Section. The study is grounded on the 1957 expenses of the railroads operating in the eastern district, as set forth in table 4:

[fol. 546]

TABLE 4

| From Boston, Mass., to Chicago, Ill. | Out-of-pocket cost | Fully- distributed cost | Proposed rate |
|---|-----------------------|-------------------------------|------------------|
| Minimum weight | | | |
| Pounds | | | |
| 20,000 | \$1.469 | \$1.714 | \$2.13 |
| 30,000 | 1.024 | 1.270 | 1.54 |
| 40,000 | .803 | 1.048 | 1.18 |
| 50,000 | .670 | .915 | 1.06 |
| 60,000 | .581 | .826 | .95 |
| 70,000 | .517 | .763 | .90 |

Witness for the New Haven stated that these costs should be increased by about 5 percent to reflect current operating expenses. The protestants submitted a similar cost study, except that it includes an additional expense of 8.747 cents per 100 pounds for loss and damage. When these additional expenses are added to those in table 4, the proposed rates more than cover fully-distributed costs.

Several of the shippers testified that they would not avail themselves of the proposed rates if they were made subject to a mixing rule. The New Haven points out that, under the plan III rates, each of the two trailers in one consignment may consist of a different commodity, and be destined to different consignees. Thus, it insists that for competitive reasons it is essential that the proposed rates be not subject to a mixing rule. Both parties rely on *Eastern Central M. Carriers Assn. v. Akron, C. & Y. R. Co.*, 306 L.C.C. 61. In that proceeding the considered all-freight rates were subject to modified rule 10 of the uniform freight classification, which provides for the application of the respective carload rates on each article in the mixed carload, subject to the highest carload minimum weight applicable on any article in the mixture, the deficit, if any, in the minimum weight to be charged for at the highest carload rate applicable on any article in the shipment. In the instant proceeding the proposed rates are not subject to rule 10.

The protestants point out that the proposed rates apply on straight as well as mixed shipments. Thus, a commodity with a carload rating higher than class 45 could move in

straight carloads of 20,000 pounds at a rate reflecting 45 [fol. 547] percent of first class, and in mixed carloads of 70,000 pounds at a rate reflecting only 19 percent of first class. They allege that this is contrary to sound classification principles, in violation of section 1(6) of the Interstate Commerce Act.

Discussion and conclusions.—In *All Freight to Pacific Coast*, 248 I.C.C. 73, the Commission gave consideration to the question whether all-freight rates on straight as well as mixed shipments are contrary to the classification principles required by section 1(6) of the act. The following from that decision at page 86, is pertinent here:

Class rates normally reflect the maximum of reasonableness on goods falling within the various classes of traffic. Commodity rates are established, and necessary or desirable exceptions to the classification are made, when circumstances and conditions suggest that the class basis is too high for application on the traffic. We have approved this basis of rate making, and have never required commodity rates to conform to the ratings of the classification. . . . To require carriers to maintain rates only on a classification basis would make section 1(6) paramount to all other sections of the act, particularly section 1(5), which requires all rates to be just and reasonable. . . .

See also, *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623, 631.

Section 1(6) makes it the duty of all common carriers by railroad "to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed * * *." Classifications of property for transportation have been established by the respondents on the traffic intended to be moved at the proposed rates. It is not contended that those classifications are unlawful. It is contended that the proposed rates fail to comply with the foregoing provisions of the act.

Rates are not violative of section 1(6) merely because they are not the class rates based on the classifications and established ratings on particular commodities. Class rates

normally reflect the maximum of reasonableness for commodities generally. However, commodity rates and classification exceptions rates, where transportation conditions suggest that the classification basis is too high to move the traffic, have long been maintained with the approval of the [fol. 548] Commission and the courts. Commodity-rate descriptions have never been required to conform to the descriptions provided in the classification. The all-freight rates here proposed are in the same category as commodity rates published to meet special transportation circumstances which the general classification ratings cannot reasonably meet. See *All Freight from Butte, Mont., to Spokane, Wash.*, 251 I.C.C. 291, 296. Section 1(6) does not require that all traffic move at rates based on classification descriptions or ratings; it requires classifications of property with reference to which rates "may be" made or prescribed. Thus, the rates which actually move the traffic may be rates in the nature of commodity rates, such as the all-freight rates here considered. In these circumstances, we are not persuaded that the proposed rates contravene the provisions of section 1(6) of the act.

The evidence before us is convincing that the proposed rates are not below a minimum reasonable level and that the proposed rates are essential if the New Haven is to be afforded an opportunity to compete effectively for this traffic. The rates appear to be compensatory, and they have been instrumental in increasing the average load of the New Haven's boxcar traffic. Thus, they promote economical transportation, and there is no indication that they result in destructive competition.

We find that the rates under investigation are just and reasonable. An order will be entered discontinuing these proceedings.

Commissioner Freas, dissenting:

Although special circumstances may provide justification, "all-freight" rates applying on straight shipments are in my opinion ordinarily highly undesirable,

Here the desire to meet competition is relied upon to justify the proposal. Yet the record is clear that rates as low as those proposed are not necessary to meet the competition.

I would find the proposed rates unjustified.

[fol. 549]

ORDER

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 10th day of February, A. D. 1961.

INVESTIGATION AND SUSPENSION DOCKET No. 7131

ALL COMMODITIES—
FROM NEW ENGLAND TO CHICAGO AND ST. LOUIS

No. 33185

ALL FREIGHT—
CONN., MASS., & R. I. TO CHICAGO & ST. LOUIS

No. 33193

FREIGHT, ALL KINDS—
MAINE TO CHICAGO & E. ST. LOUIS, ILL.

No. 33202

ALL-FREIGHT RATES FROM
NEW ENGLAND TO ILL., IND., MO.

No. 33269

ALL ARTICLES—FROM WINDSOR, VT., TO
E. ST. LOUIS, ILL., & ST. LOUIS, MO.

It appearing, That in I. & S. No. 7131, by order dated March 11, 1959, the Commission entered upon an investigation concerning the lawfulness of the rates, charges, rules, regulations, or practices contained in the schedules described in said order; and suspended the operation of the schedules to and including October 15, 1959; and that by order of July 6, 1959, the aforesaid order was vacated and set aside insofar as it suspended the operation of the schedules designated therein, but that the proceeding of investigation of said schedules remained in full force and effect;

It further appearing, That in Nos. 33185, 33193, 33202, and 33269, by orders dated August 28, 1959, and later, the Commission entered upon investigations concerning the

lawfulness of the rates, charges, rules, regulations, or practices contained in certain schedules described in said orders;

And it further appearing, That a full investigation of the matters and things involved in these proceedings has been made, and that said division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That these proceedings be, and they are hereby, discontinued.

By the Commission, division 2.

Harold D. McCoy, Secretary.

(Seal)

[fol. 666] Secretary's Certificate to following exhibits (omitted in printing).

[fol. 667]

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENTS' EXHIBIT 1

ALL COMMODITIES—

FROM NEW ENGLAND TO CHICAGO & ST. LOUIS

I. & S. Docket No. 7131

Testimony of Harold D. Hartmann,
General Freight Traffic Manager

(1) Q. Please state your name, address, employment and experience.

A. I am Harold D. Hartmann. My office is at 54 Meadow Street, New Haven, Connecticut, and I am General Manager of Freight Rates for The New York, New Haven and Hartford Railroad Company. I have been with the New Haven since May, 1918, first in the Accounting Department for sixteen years, then in the Traffic Department as Traffic Representative, Assistant General Freight Agent, General Freight Agent, Assistant Freight Traffic Manager and Freight Traffic Manager. Since April 1, 1959 I have been General Manager—Freight Rates. I have also had ex-

perience in the traffic department of a motor carrier of freight in New England, the New England Transportation Company, which is a wholly-owned subsidiary of the New Haven Railroad.

[fol. 670] (2) Q. Have you a copy of the tariff setting forth the rates under investigation in this proceeding?

A. Yes, my Exhibit HDH-2 is a copy of these rates. As noted on the cover page I was the issuing agent. The tariff containing these rates is the New Haven Railroad's I.C.C. F-4501, and the rates themselves are set forth in section 2 of Exhibit HDH-2, Items 400 through 430, pp. 15-16.

(3) Q. Please describe the steps which were taken to make these rates effective.

A. Tariff I.C.C. No. F-4501, Exhibit HDH-2 was issued February 12, 1959 to become effective March 16, 1959. On March 11, 1959 the Commission suspended the rates in section 2 of the tariff and ordered them investigated in this proceeding. The New Haven Railroad, the Chicago Shippers Association, Inc., Montgomery Ward and Company, Inc., and the New England Industrial Traffic League all filed petitions requesting vacation of the Commission's order of suspension, and on July 6, 1959 the Commission by Division 2, acting as an Appellate Division vacated the suspension as of July 16, 1959 but continued the investigation. Thereafter, on September 15, 1959 the Commission denied a petition for reconsideration of the order vacating the suspension.

(4) Q. Is Exhibit HDH-2 the only tariff publishing rates under investigation in this proceeding or related to the [fol. 671] rates thus under investigation?

A. No. Supplement 1 to our F-4501 effective April 15, 1959 added to Section 2 a clause reading: "If the charge accruing on a given shipment under Section 1 of this tariff is lower than that accruing under this section the charge accruing under Section 1 will apply." Supplement 2 announced the Commission's suspension order, and Supplement 6 announced vacation of this suspension. Supplement 7, a copy of which is marked Exhibit HDH-3, pub-

lished rates to Chicago and St. Louis on the same basis as those previously placed under investigation from additional points in New England.

(5) Q. Has Supplement 7 become effective?

A. Yes, on September 2, 1959, but only over protest, and after the Board of Suspension on August 28, 1959 in Case No. 20853 had refused to suspend. The Board ordered Supplement 7 to be investigated in Docket 33185, insofar as it enlarged the origin area to which these rates apply.

(6) Q. Please continue with your list of tariffs related to this investigation.

A. On October 10, 1959 Supplement 8 became effective further enlarging the origin points from which the Section 2 rates are applicable, and on October 26, 1959 additional points were added by Supplement 9. Copies of these publications have been marked Exhibit HDH-4 and HDH-5, respectively. In addition this investigation includes Supplement [fol. 672] ment 63, pp. 4 thru 6, Section 1 of New York Central Railroad Company Tariff I.C.C. No. 1661, and Items 87 and 539, pp. 2 thru 4 of Supplement 10 to Boston and Maine Railroad Tariff I.C.C. No. A3247. These are publications from New York Central and from Boston & Maine origins of the same rates as those of the New Haven, referred to above. As I said was true of the New Haven's, these rates are no longer under suspension, although investigation of them continues. They are on a complete competitive parity with the rates from New Haven origins and, in my opinion, certainly ought to be allowed to remain in effect so long as the rates from New Haven origins are effective. I will not undertake to testify about specific circumstances characterizing the New York Central and the B&M origins and their traffic but much of what I have to say in the balance of my testimony is as true of the B&M and the New York Central rates as it is of the rates from New Haven origins. I understand that if there arises any question concerning the traffic aspects of the Central and the B&M rates under investigation which I cannot answer, counsel for these roads are prepared to supply a witness who can provide the answer.

(7) Q. Please explain the nature of the rates under investigation.

A. They apply from stated origins in New England to Chicago and to St. Louis. In other words they apply only [fol. 673] in a westbound direction. They apply on all commodities, with certain specific exceptions, in either straight or mixed carloads. They are limited to apply in box cars, excluding specially equipped and damage-free cars. They permit no transit or stop-off privileges and they do not apply on import, export or ex-water traffic. They are scaled to weight maxima ranging in 10,000 pound intervals from 20,000 pounds to 70,000 pounds. The 20- and 30,000 pound rates are limited to movement in box cars of 40' 7" or shorter. Therefore whenever these rates apply to a movement of less than 40,000 pounds in a car longer than 40' 7" the lowest rate applicable is the 40,000 pound rate and the applicable minimum weight is, of course, 40,000 pounds.

They are based on Docket 28300 groupings, and the origin points are grouped for example as follows:

The Boston group includes Boston and North Plymouth, Mass.

The New Haven group includes New Haven, Clinton and West Haven, Conn.

The New London group includes New London and Groton, Conn.

The Fitchburg group includes Fitchburg and Leominster, Mass.

The Providence group includes Providence, Cranston, Darlington, Phillipsdale, Saylesville and Woonsocket, Rhode Island.

The Springfield group includes Springfield and Armory, Mass.

The Stamford group includes Stamford, Georgetown and Norwalk, Conn.

The Waterbury group includes Waterbury, Ansonia, Bristol, Derby-Shelton, Naugatuck and Torrington, Conn.

The Worcester group includes Worcester, Blackstone and Webster, Mass.

The remaining origins are Bridgeport, Conn., Bristol, R. I., Cabot, Mass., East Providence Wharf, R. I., Fall River, Mass., Fox Point, R. I., Harbor Junction Wharf, R. I., Hartford, Conn., Holyoke, Mass., Meriden, Conn., New Bedford, Mass., New Britain, Conn., Northampton, Mass., Paw-[fol. 674] tucket, R. I., Pittsfield, Mass., South Braintree, Mass., South Norwalk, Conn., South Providence, R. I., Wallingford, Conn., Watuppa, Mass., Westfield, Mass., Walpole, Mass., and Willimantic, Conn. These origins are listed in Items 405, 410, 415, 420, 425 and 430, p. 16 of Exhibit HDH-2, Items 150, 156, 158, 160, 162, 164, 168 and 172, p. 2, Item 430-A, p. 4 of Exhibit HDH-3, Items 152, 156-A, 164-A, 168-A, p. 3 of Exhibit HDH-4, and Items 152, 156-A, 160-A, 164-A, and 168-A, p. 3 of Exhibit HDH-5.

The rates in question represent in each of the weight brackets involved the following percentages of the Docket 28300 first class rate, including the Ex Parte 212 increase:

| | |
|------------------|-------|
| 20,000 lbs. | 45% |
| 30,000 lbs. | 32.5% |
| 40,000 lbs. | 25% |
| 50,000 lbs. | 22.5% |
| 60,000 lbs. | 20% |
| 70,000 lbs. | 19% |

They have not been published on a between basis or on a group basis, but they have been confined to specific origins and destinations and to the most important westbound traffic because it was not practicable to attempt to do anything other than this and to achieve the goal of making them effective within a reasonable time from when we reached the decision to publish them.

[fol. 676] (10) Q. Are you prepared to show that Mr. Haydon's cost computations are in error?

A. Well, I know how to use the Commission's territorial cost scales such as those in Statement No. 5-58 and in fact I often make reference to them in reaching a decision

whether to approve the publication of a particular rate in the course of handling my day-to-day work. However we have arranged for our Assistant Comptroller, Mr. Hollis Coyle, to attend this hearing and he will explain the costs involved here, because he is by profession a cost accountant and can more expertly than I supply the answers to questions which may arise concerning rail costs. I can point to Mr. Haydon's misstatement of the meaning of the tariffs under investigation which certainly caused him to misstate the costs involved.

(11) Q. Please do so.

A. Note 2 of Item 400 of Exhibit HDH-2 makes the proposed rates subject to "Rules and Regulations provided in the Uniform Freight Classification and Exceptions thereto, including packing requirements." Certain rules are then excepted. Rule 14 is not excepted and therefore governs the proposed rates. It reads in part:

[fol. 677]

"Section 1. Carload ratings or rates apply only when a carload of freight is shipped from one station, in or on one car, except as provided in Rules 24, 29 or 34 * * *."

Note 2 of Item 400 specifically states that Rules 24, 29 and 34 of the Uniform Classification will not apply. Therefore it follows that the proposed rates cover the movement of a consignment in not more than one car. Mr. Haydon listed costs for the movement of 70,000 pounds in two cars and credited us with revenue only from one consignment. Therefore he was wrong and, by understating the revenue we would receive for the movement of two cars under the proposed rates, each with 35,000 pounds, he reached the conclusion that our costs would exceed our revenue. On his movement of two cars with 35,000 pounds each he should have credited us with total revenue of \$944.00, or \$472.00 per car to Chicago from Boston (35,000 as 40,000 at \$1.18 x 2).

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[fol. 678] (13) Q. Are there other rules governing these rates which affect the revenues with which costs should be compared?

A. Yes. Note 3 to Item 400 in Exhibit HDH-2 renders the proposed 20,000 pound and 30,000 pound rates inapplicable to cars longer than 40' 7". Whenever revenue from a car longer than 40' 7" is calculated from Boston to Chicago, for example, the minimum weight is 40,000 pounds and the minimum rate is \$1.18. * * *

(14) Q. What if any aspect of these rates affect loss and damage expense?

A. These rates are applicable under Item 400 of Exhibit HDH-2, Tariff No. I.C.C. F-4501, to "All articles named in Uniform Freight Classification and Exceptions thereto, in straight or mixed carloads" with stated exceptions. The exceptions are expressed in the form of item numbers in the Uniform Freight Classification. These exceptions include those applicable to Plan III TOFC rates (which I shall discuss later in my testimony), namely livestock, explosives, military equipment, scientific equipment and perishable freight. However, also excluded from the proposed rates is each commodity group which, in Statement 5-58, Rail Carload Cost Scales by Territories for the Year 1957, published by the Commission's Bureau of Accountants, Cost Finding and Valuation, is reported to have experienced loss and damage expense in excess of 8.7 cents per cwt. For example, the exceptions include plumbers goods (16.5 cents L&D expense, p. 73, line 17, Statement 5-58), Stoves, ranges, and parts (13 cents, line 21), Furniture (11 cents, line 26, p. 73), Furnaces, radiators and parts (13 cents, line 29), China, Crockery and earthenware (18 cents, line 33), and Refrigerators (12 cents, line 37). Thus it is certain that traffic under the proposed rates will not incur an L&D expense greater than 8.7 cents per cwt., and the assumption is a safe one that this L&D expense will be much less than 8.7 cents which is the ceiling, and not the average of the rate at which the remaining commodity groups incur such expense.

(15) Q. Mr. Hartmann, please compare the all-commodity rates under investigation with the all-commodity rates which were previously in effect.

A. The 20,000 pound scale of rates under investigation is 45 per cent of Docket 28300 First Class as I said previously. This is slightly higher than the all-commodity rate level explicitly approved by the Commission and referred to as an appropriate standard in two recent Commission decisions, *All-Commodities—Mixed Carloads—Between Points in Official Territory*, I & S Docket No. 6992 (March 6, 1959), and *All-Freight—Cicero, Illinois, and Dayton's Bluff, Minnesota*, I & S Docket No. 7005 (March 3, 1959). An example of the previously existing (and still effective) all-commodity rate level may be found in Item 280, p. 13 of Exhibit HDH-2 where a 30,000 pound rate of \$2.04 is listed as applicable from Boston, Mass. to Chicago. However, previously existing box car all-commodity rates as the result of promiscuous loading, "marriage" and other like rules and practices, permit a consignment to be carried in more than one freight car. In other words, even though previously existing all-commodity rates are applicable to 30,000 pound weight minima, the average weight per all-commodity car has been far less than 30,000 pounds. For the year 1957 the New Haven Railroad originated and delivered to connecting lines 25,296 cars of freight forwarder traffic with a total weight of 490,014,000, averaging 19,680 pounds per car, and in 1958 the comparable figures were 22,755 cars totalling 437,130,000 pounds or 19,320 pounds per car. The \$2.13, 20,000 pound rate under investigation from Boston to Chicago therefore yields a greater net revenue than the all-commodity box car rate of \$2.04 per cwt. applicable to 30,000 pounds at 45 per cent of the interim Docket 28300 First Class. The rates under investigation cannot involve the carrier in the expense of moving more than one box car per consignment.

[fol. 681] (16) Q. Who is the person acting in an executive capacity who was responsible in the first instance for the New Haven Railroad's decision to concur in the publication of the all-commodity rates under investigation?

A. I am because the making of such decisions is my responsibility as General Manager of Freight Rates. Of course such decisions are subject to review by our Vice President in charge of freight traffic and, moreover, he can

and does initiate such decisions. This one, however, I initiated.

(17) Q. Before going into detail concerning them, please state in general terms the factual circumstances which were the reasons why you decided to publish these rates.

A. The railroads in Official Territory and especially in New England Territory have progressively lost intercity freight traffic to highway motor transportation over the past twenty years. This loss has occurred most heavily with respect to high-rated high-grade traffic which is the most profitable to haul. This loss has been especially damaging in New England where inbound traffic tends to consist of raw and semi-finished materials and outbound traffic tends to consist of finished, high-grade materials particularly vulnerable to truck competition. The result of this is a tonnage imbalance which has become very expensive to the New Haven Railroad. The Commission found in I & S [fol. 682] Docket No. 6992 at page 5 of the report issued March 6, 1959, that the New Haven dispatches daily empty box car capacity to Chicago, St. Louis and beyond of 9,720 net tons. In point of fact 71 per cent of the New Haven Railroad's empty box car and refrigerator car movement is in a westbound direction. At present, about 7,500 net tons of empty car capacity move from New Haven points westbound daily side by side with loaded highway semi-trailers moving over the road and carrying tonnage which in my opinion has been surrendered by an uncompetitive rail rate structure. The proposed rates have the purpose of preventing such further rail traffic erosion and of refilling these empty box cars outbound from New Haven Territory with traffic once enjoyed by the railroad and which, so I understand Mr. Coyle is prepared to testify, can be carried at an extremely low level of added cost.

The second reason for concurrence by the New Haven in the proposed rates arises from these facts. Many of the railroads serving New York, Boston, Philadelphia, Chicago and St. Louis have, during the past eighteen months, readjusted their rate structures on all-commodity rates with the purpose of regaining the high-grade traffic such as

I have just described, and which in my opinion has been unnecessarily lost to highway transportation. To do this they have published so-called Plan III trailer-on-flat-car rates expressed in terms of charges per a maximum con-[fol. 683] signment of 70,000 pounds and covering the movement of two, loaded, shipper's semi-trailers aboard a flat car between rail ramp yards. The all-commodity rates on loaded box cars now under investigation produce revenues from Boston to Chicago of \$630.00 per car of 70,000 pounds (90 cents per cwt.). The applicable Plan III charge produces revenues per 70,000 pound car of \$494.50. The New Haven Railroad lacks a sufficient number of flat cars, as another witness is prepared to explain, to enable it fully to compete by use of Plan III charges. Plan III charges also fail to solve the New Haven's principal cost problem, namely a huge east-west traffic imbalance with the result that three quarters of the New Haven's empty car movement is westbound, and that westbound movement to Chicago and St. Louis represents empty carrying capacity of about 7,500 tons daily. Therefore the New Haven has published these all-commodity westbound box car rates, which in the 20,000 pound bracket exceed 45 per cent of interim Docket 28300 First Class, and in the 70,000 pound bracket produce revenues per car which are \$135.50 or 29 per cent more than that produced by existing Plan III rates from Boston to Chicago. Assuming a 70,000 pound Plan III load, and excluding the cost to the patron of Plan III trailer ownership and terminal drayage, the rates under investigation from Boston, Massachusetts, for example, have a relationship to Plan III as indicated by a schedule which I [fol. 684] have marked Exhibit HDH-7. As you see, at 20,000 pounds the Boston-Chicago box car rates are 34 cents per cwt. below Plan III and at 70,000 pounds they are 19 cents over Plan III. These Plan III rates were, almost all of them if not all of them, vigorously protested before the Board of Suspension and the protest was pressed to the Commission for reconsideration. The Commission has refused to investigate them on its own motion. They are the subject of a pending complaint proceeding in Docket 32533 and some of the protestants in this proceeding are

complainants in Docket 32533. During the first two months of the effectiveness of the Plan III rates between New England and the Midwest the New Haven lost the equivalent of 350 to 400 cars of traffic from Boston to St. Louis because of its disability to provide Plan III service. The New Haven lost a movement amounting to half a million pounds a week from the Connecticut area to the Midwest because this traffic began to move via Plan III from New York rail ramp yards. However, since the box car rates under investigation became effective July 16, 1959, when their suspension was vacated, the New Haven has recaptured part of this traffic and I expect we will get it all back in the near future.

(18) Q. Mr. Hartmann, what are the facts on which you base your statement that the New Haven has progressively lost intercity freight traffic which is high-rated and high-[fol. 685] grade?

A. Well, for example during 1958 the New Haven's total Manufactures and Miscellaneous traffic produced 61.5 per cent of the Road's freight revenue. It is clear that this particular segment of traffic produces the greatest net revenue. The New Haven's average revenue per ton for all carload freight during 1958 was \$3.99 whereas the average revenue per ton from Manufactures and Miscellaneous traffic was \$4.66. The average revenue per car during 1958 from all carload freight was \$115.24 whereas the average revenue per car from all M. & M. carload freight was \$127.23. Bearing in mind the net revenue significance of M. & M. traffic I have prepared Exhibit HDS-8 which shows M. & M. traffic forwarded by the New Haven to points on other lines for the years 1947 through 1958. Exhibit HDH-8 supplied for each year in question the following information concerning this traffic: the number of cars, the number of tons, total freight revenue, average net tons per car, average revenue per car and average revenue per ton. The decrease in volume has been drastic from 2,941,557 tons in 1947 to 1,479,902 tons in 1958, a drop of approximately 50 per cent. Revenues did not decrease so sharply. They were \$10.8 millions in 1947 and \$8.6 millions in 1958. This was because average revenues per ton increased from \$3.68 to

\$5.82 and this in turn was because of increases in rail freight rates that I would like to explain more fully in a [fol. 686] moment. It is apparent, however, that revenues were preserved at a level of \$8.6 millions only at the expense of a very great diversion of traffic caused by the maintenance of a high rate level. In my opinion, if the railroad were to do nothing to halt this process, progressive rate increases would be needed to slow down erosion of total revenues, and these increases would actually accelerate the tonnage diversion which, of course, is the basic reason for the revenue losses. Sooner or later this process, unless it is stopped, has to result in a serious contraction of the rail transportation plant and a curtailment of rail transportation facilities and service.

(19) Q. You have suggested that the tonnage losses of which you speak have been diverted. Are there facts on which you base an opinion as to where this traffic has gone?

A. The volume of traffic we moved in 1947 has either ceased to move completely or it is moving by other means of transportation. To develop an answer consideration must be given to what has been happening to the rail industry in our national economy over the years. The Commission's own statistics, published by the Bureau of Transport Economics and Statistics, *Transport Economics*, January, 1959, a copy of which I have with me, illustrate this briefly and vividly at page 8 in a schedule showing revenues of carriers and national income for the years 1939, and 1947 through 1957. In 1957 the national income was 500 per cent of what it had been in 1939. During the same period rail revenues had increased only 263.7 per cent with the consequence that, whereas rail revenues in 1939 were 5.7 per cent of national income, in 1957 they had decreased to 3.0 per cent. Motor carrier freight revenues exhibited exactly the opposite trend. Between 1939 and 1957 it increased 777.6 per cent, and the ratio of motor carrier freight revenue to national income increased from 1.1 per cent to 1.7 per cent. I have listed the indices from this table and marked a copy of this list Exhibit HDH-9. Concerning them the Bureau said at page 7 of the January 1959 issue of *Transport Economics*:

"The three carrier groups in the table which showed increased operating revenues in 1957 over those in 1956 had larger percentage increases than was shown for national income; Air, 12.9 percent, motor carriers of passengers, 5.9 percent; and motor carriers of property, 5.7 percent; against national income, 4.2 percent. Pipe lines showed a decrease of 1.0 percent, and railroads, 0.4 percent."

(20) Q. Has the Bureau of Transport Economics and Statistics published information concerning the distribution of intercity freight tonnage which corresponds with these revenue figures?

A. Yes. The Bureau's figures on distribution of intercity freight ton-miles among the modes of intercity inland transportation in the United States for the years 1939 through 1957 are marked Exhibit HDH-10. This schedule shows railroad ton-miles in column 1 which are performed in freight-train service by Class I, II, and III roads, with the addition of mail and express ton-miles handled in passenger trains, and a small amount of service performed by interurban railroads. Motor truck ton-miles are shown in column 2 and include not only the intercity ton-miles of carriers reporting to the Commission but also intercity ton-miles of private and exempt trucks as estimated by the Commission's Bureau of Statistics based on surveys conducted by the Bureau of Public Roads. The significance of this data is clearest from a series of calculations which I have made based on Exhibit HDH-10 and which I have marked HDH-11. I have placed the intercity tonnage distribution on a percentage distribution basis, with the aggregate ton-miles of all types of transport for each year equal to 100 per cent and each mode's share expressed in percentages of that aggregate. It will be noted that in 1939 the railroads handled 62.4 per cent of the total ton-miles performed by all agencies. Beginning with 1941 and continuing in 1942 and 1943, the railroad percentage turned upward, reaching 71.3 per cent in 1943, a gain of 10 percentage points over 1940. In my opinion this increase was due to the fact that the railroads during

World War II absorbed most of the added traffic generated by the war and also took over some of the traffic that trucks and other means of transportation were unable to handle because of shortage of materials and manpower.

Since 1943 the railroad ratio has declined in each year. [fol. 689] It fell to a new low (46.3 per cent) in 1957. On the other hand, the portion of freight traffic handled by motor trucks as listed in column two of Exhibit HDH-11 shows directly an opposite trend. The ratio for trucks increased from 9.7 per cent in 1939 to 10.5 per cent in 1941. During the war it dropped to 5.4 per cent in 1944. Thereafter the truck percentage again steadily increased reaching 19.3 per cent in 1957.

I think these two exhibits are particularly significant when considering the national defense aspects of transportation. Between 1939, the year before the national defense program got under way in this country, and 1944, the last full year of World War II, total ton miles in the United States more than doubled. As shown in column 7 of Exhibit HDH-10, total ton-miles were less than 544 billion in 1939 and more than 1,088 billion in 1944, an increase of over 544 billion. Excluding pipelines, the total increases in ton-mileage between 1939 and 1944 was 467 billion. The railroads absorbed more than 87 per cent of this increase; motor trucks absorbed 1.2 per cent. The experience in World War II seems to me to demonstrate the ability of railroads to absorb increased traffic demands associated with a national emergency. Railroads, because of their marked superiority in efficient utilization of manpower and fuel, are peculiarly adapted to such an emergency role. Reversal in the post war period of trends experienced in the war years does not mean to me that railroads are any less essential than they were in 1944. What it does indicate is the rapid rise of competitive agencies, assisted by the use of transportation facilities provided for them by the Government.

(21) Q. Please state what conclusion you draw from these facts which influenced the New Haven's decision to publish the rates under investigation.

A. The indication to me is plainly that incremental increases in traffic resulting from incremental increases in the national income are not moving by rail and are moving by highway or other form of transportation.

(22) Q. If there are facts which in your opinion supply the reason for this result, please state them.

A. There are several reasons for this. The first is increases in the rail rate level. It will be noted from Exhibit HDH-9 that by 1947 the motor carrier revenue rate of increase was only slightly higher than that of the national income (279.4 per cent versus 272.3 per cent) whereas the rail increase rate had fallen behind by one-fifth (216.7). At this time the results had begun to be felt of the Ex Parte 162-increase which became effective January 1, 1946 and amounted to 25 per cent in Official Territory. On October 13, 1947 Ex Parte 166 produced a 10 per cent increase; on January 5, 1948 this went to 20 per cent and on May 6, 1948 it became 30 per cent. The result is evident in the 1949 rates [fol. 691] of increase of rail and truck income. The rail rate of increase had dropped to 28 per cent (a ratio of 214.6) of that of the national income (299.0) whereas the truck rate of increase had risen to 367.5 or a level 22 per cent above the rate of increase of the national income. The interim Ex Parte 168 increase of 6 per cent on January 11, 1949 and the subsequent permanent increase of 10 per cent are reflected in Exhibit HDH-9's ratios for 1950. The rail index of 237.2 was 29 per cent below that of the national income and the truck index of 471.7 was 43 per cent above. Ex Parte 175 (4 per cent on April 4, 1951; 9 per cent on August 28, 1951; and 15 per cent on December 31, 1955) increased this spread, the rail rate for 1956 (264.8) being 45 per cent below the national income rate and the truck rate (735.8) 53 per cent above.

(23) Q. Were these rail rate increases accompanied by truck rate increases?

A. Oh, yes. I don't mean to suggest that these rail rate increases lost the rails traffic because the truck rate level remained static. Quite the contrary is true, in fact. I have listed the Appendix E, Docket 15879 class rate in-

creases from 1931 to 1957 by classes and mileage blocks in a document marked Exhibit HDH-12. This exhibit illustrates that what these rail rate increases did is to create a rate umbrella with respect to long hauls. This umbrella enlarged greatly the scope of the territory with- [fol. 692] in which motor carriers could profitably compete for rail traffic. Consider, for example, the haul involved under the all-commodity box car rates of more than 900 miles from Boston to St. Louis and to Chicago. "In 1931 only the third-class rate for this distance of 900 miles was over \$1.00 per cwt. On sheet 3, January 1, 1947 the fourth-class rate became \$1.08 per cwt., on sheet 5, effective September 1, 1949 the fifth-class rate was \$1.06 and by March 7, 1956, on sheet 7, the sixth-class rate had reached \$1.06, and eventually \$1.19 on August 26, 1957, sheet 8.

In 1931 fourth-class moved 300 miles at 44 cents per cwt. and an addition of 600 miles to the haul yielded only 34 cents per cwt., sheet 1. On January 1, 1947, sheet 3 this additional 600 miles produced 48 cents, on September 1, 1949, sheet 5, 68 cents, on March 7, 1956, sheet 7, 83 cents, and on August 26, 1957, sheet 8, 94 cents per cwt. In other words the incremental rate on the last 600 miles of a 900 mile haul had increased proportionately the same as had the first-class rate on a 300 mile haul (about 175 per cent). Plainly this was a great competitive boon to truck transportation and a great sacrifice of rail competitive advantage over the long haul. The result is the lag between the rate of increase of rail and of national income. Motor carriers were able to participate in the national income to an increasingly greater extent during the period when rail participation fell off.

[fol. 693] These considerations become especially important when it is realized that the motor carrier rates which have undercut rail prices are themselves becoming inadequate to hold highway traffic. In 1956 total rail ton miles were 655.9 billions, 100 per cent federally regulated. In the same year 253.8 billion truck ton miles moved, of which only 83 billion or 32.7 per cent were via federally-regulated carriers. Moreover, as pointed out in *Transport Economics*

for March, 1958, p. 10, these figures are the culmination of steady declines from levels of federally regulated ton mileage existing in prior years.

(24) Q. Are these the only effects on rail traffic produced by these rate increases?

A. No. The increase in the rail rate level which has occurred since 1931 has not only increased the length of the motor carrier haul which is possible under the protection of rail rates but also has curtailed rail ability to compete for the traffic which bears the greatest per ton share of the transportation burden, i.e. high-rated traffic. Exhibit HDH-13 is a comparison of total Freight Revenue with revenues from Manufactures and Miscellaneous, from Less than Carload and from Freight Forwarder traffic, for the Eastern District and for the New Haven Railroad. Exhibit HDH-13 also shows ratios by years, considering 1939 as equal to 100, and ratios of M. & M., LCL Forwarder revenues to total freight revenues. It therefore compares total [fol. 694] freight revenues with revenues from those classes of freight which are high-rated, namely M. & M., LCL, and Forwarder traffic. The New Haven Railroad's need to rely on high-rated traffic, as is evident from the Exhibit, is great in comparison with the other roads of the Eastern District, because the New Haven serves a manufacturing territory where high-rated commodities are originated, and a territory characterized by a relatively high income per capita, hence where high-rated commodities will also tend to terminate.

Approximately 68 per cent of New Haven Railroad revenue is derived from Less than Carload freight and from Carload freight in the Manufactured and Miscellaneous group. Exhibit HDH-14 shows the part M. & M. traffic plays in the total revenue of the New Haven Railroad and of the railroads in the Eastern District. The New Haven Railroad has derived from 2.2 percentage points in 1943 to 13.2 percentage points in 1956 more of its revenue from this group than have the roads of the Eastern District.

Exhibit HDH-15 shows the per cent of L.C.L. revenue to total revenue for the Eastern District and the New Haven Railroad. In 1939 when the Eastern District relied on LCL

for only 7.5 per cent of its revenues the New Haven derived 18.9 per cent from this source. When this ratio for the Eastern District had dropped to 3.1 per cent in 1957, the New Haven's dropped to 5.4 per cent.

[fol. 695] Exhibit HDH-16 combines the Manufactured and Miscellaneous Group and LCL Freight Revenue and compares the resulting composite of these with the total Freight Revenue for the Eastern District and the New Haven Railroad. Here it will be noted that the New Haven Railroad must depend on these two groups of commodities for the major portion of its Freight Revenues, or close to 68 per cent, while for the Eastern District this dependency ratio is approximately 53 per cent.

(25) Q. What have these ratios to do with the rate increase you have been referring to?

A. The New Haven's dependency on LCL and on M. & M. traffic is considerably greater than that of the Eastern District. In this situation the New Haven's revenues ought to be more adversely affected by the Ex Parte rail rate increases than those of the Eastern District because of the resulting diversion of high-grade traffic to motor carriers. The facts are in accord with this.

Exhibit HDH-17 is a revenue index comparison of the Eastern District with the New Haven Railroad on Manufactured and Miscellaneous carloads for the years 1939 to 1957, inclusive. Up to and including 1947, the rate of revenue increase of the New Haven Railroad approximated that of the Eastern District, but thereafter this rate fell well below the Eastern District's. This was the direct result of the increases under Ex Parte 162, 166, 168, 175 and 196 discussed above and detailed in Exhibit HDH-12. [fol. 696] These increases permitted motor carriers to extend the scope of their competition with the rail carriers. For example, in 1947 the New Haven Railroad handled 10,738 cars of building paper and prepared roofing materials. Account 673. In 1948 we handled 8,848 cars (a reduction of 1,900 cars), in 1949 we handled 6,213 cars, and in 1950 we handled 5,844 cars. The loss of this traffic was directly attributable to the increases under Ex Parte 162, 166 and 168. This instance is fully illustrative of the effect

of Ex Parte increases on traffic in the Manufactured and Miscellaneous Group.

Exhibit HDH-18 is a comparison of the total revenue index for all Railroads for the Eastern District, and for the New Haven Railroad, in the years 1947 to 1957, inclusive, using 1939 as index 100. Because the railroads in the Eastern District originate and terminate a high proportion of the country's M. & M. traffic their rate of revenue increase has fallen well behind the rate of all railroads, just as has the New Haven trailed the other roads in the Eastern District for a like reason. Exhibit HDH-19 concerning LCL traffic is further evidence of this. It shows a revenue index on LCL traffic for the Eastern District compared to the New Haven Railroad for the years 1939 to and including 1957, using 1939 as index 100. Until 1942 the index for the New Haven Railroad compared favorably with that for the Eastern District, but from 1943 on the New Haven Railroad index gradually dropped away from [fol. 697] the Eastern District index so that the 1957 Eastern District index was only 1.6 points under that of 1939, while the New Haven Railroad 1957 index was 45.7 points under its 1939 index.

A comparison of the New Haven's with the national average revenue per rail ton carried illustrates further the effect of Ex Parte increases. Because hauls on the New Haven are shorter than the national rail average haul. Exhibit HDH-20 indicates that since 1939 the New Haven's average revenue per ton has been consistently less than the national average. However, whereas the New Haven's in 1939 (\$2.59) was 48 per cent of the national average (\$5.41), in 1957 this ratio (\$4.67 to \$11.52) decreased to 41 per cent. More importantly, whereas the national average in 1957 was 212.9 per cent of that in 1939, the New Haven's was only 180.3 per cent. Again, this has been due to a loss of high-grade traffic which has been diverted to highway transportation under the protection of a rail rate umbrella.

(26) Q. Have rail rate increases in your opinion been the only reason for the diversion of long haul rail tonnage to trucks?

A. No. Rail rate increases have not been the only force which thus has shifted intercity traffic from rails to trucks. Since 1934 there has burgeoned a huge highway construction program by virtue of which truck transportation has [fol. 698] been supplied with thousands of miles of right-of-way, which thereafter has been maintained at public expense. The Presidential Advisory Committee on Transport Policy and Organization in a report issued in April of 1955 indicated the extent to which the Government has participated in the development of highway transportation in latter years.

"In major respects, government has played a decisive role in these fast moving and dynamic changes in the organization, financing and operation of the Nation's domestic transportation services. All levels of government have participated. The states have played a dominant role in the provision of an expanding and modernized highway system, although aided by the Federal Government through a program of grants-in-aid. The Federal Government has spent vast sums of the general taxpayer's funds for the improvement of rivers and harbors. More recently it has aided materially in the development of airports, the financing and management of a nationwide system of aids to air navigation and has advanced substantial sums of money in the form of direct financial assistance for the development of air transportation."

Between 1944 and 1957 truck registrations, exclusive of tax-exempt and publicly-owned vehicles, increased from 4,513,000 to 10,465,000, or by 132 per cent. Moreover, the highway construction and maintenance programs have resulted in truck rights-of-way which are greatly improved over what used to be available. This is indicated by the sizeable increases in the weight, length and height of motor equipment which a motor carrier may operate over the nation's highways today. Exhibit HDH-21 is a review of these limits obtaining in the states normally considered as Official Territory on June 1, 1934, January 1, 1946, January 1, 1950, and July 1, 1958. Between 1934 and

1946 the state of Delaware increased the height limit from 12' 2" to 12' 6". Between 1946 and 1950 Illinois and New Jersey raised height limits by one foot, and Indiana and Vermont by 6". Between 1950 and 1958 Indiana, Michigan and Ohio increased these limits by one foot. Subsequent to 1946 a like trend became well-nigh universal regarding permissible vehicle lengths. By 1950 Connecticut, Maine, Massachusetts and Rhode Island had increased length limits by five feet and Indiana by ten feet. Between 1950 and 1958 an additional five feet was allowed by Illinois, Maine, Michigan, Missouri, Ohio, Pennsylvania, Virginia, West Virginia and Wisconsin. Thus the highway system in this territory has been modified and is now maintained so as considerably to increase the cubic volume which a motor carrier can carry in a single vehicle, and heavier loading of lesser density freight is possible.

In 1934 the average tractor semi-trailer unit had a tare weight of about 20,000 pounds and could haul a payload of no more than 20,000 pounds. Today the tare is about the same, but improvements in the truckers' rights of way made at public expense have permitted an increase in the maximum payload up to 35,000 and 40,000 pounds. Exhibit HDH-21 reflects this. In seventeen of the nineteen states in official territory highway improvements have increased highway truck weight limits since 1934. The average such increase is from 40,000 to 60,000 pounds, approximately. This is an increase of about 100 per cent in net payload. Plainly these physical changes in the territory's transportation plant alone would increase motor carrier ability to compete with rail transportation.

[fol. 701] (27) Q. What, if any, indication does the progress of rail freight forwarder revenues give of the effects of truck competition on rail revenue?

A. Further indication of the effect of truck competition is the behavior of rail revenues from forwarder traffic, reflected by Exhibit HDH-13. This is the source through which railroads have hoped to compensate for loss of LCL traffic. In the Eastern District LCL which in 1939 was 7.5% of total freight revenues by 1957 had shrunk to 3.1%. This regression has been especially damaging on the New

Haven, where the LCL portion dropped from 18.9% to 5.4%. In the Eastern District LCL revenues in 1957 were approximately of the same magnitude as they were in 1939, i.e. about \$105 millions. On the New Haven, however, 1957 LCL revenues were only a little more than half what they were in 1939.

Forwarder revenues have failed to make good any appreciable portion of this loss. Forwarder rates have taken the full impact of all increases from Ex Parte 162 to Ex Parte 206A, inclusive. During that ten year period from 1947 to 1957 the first class rate increased about 98% (Exhibit HDH-12). However, forwarder revenues in the Eastern District increased only from \$48.0 million to \$83.7 millions, about 74%. On the New Haven forwarder revenues increased from \$2.0 millions to \$3.3 millions between 1947 and 1957, about 65% (Exhibit HDH-13). Obviously, forwarder volume has fallen off in this period of rate increases. This is true because there is not sufficient spread between the rate charged the forwarder's customer and the rail carload rate which the forwarder must pay to make it profitable for the forwarder to compete with motor common carriers for LTL traffic.

(28) Q. What has been the overall effect on the nation's economy and transportation industry of the processes and events you have been describing?

A. Rail rate increases on the one hand have resulted in diversion of rail freight to other forms of transportation and in the decentralization of industry. On the other hand these rate increases have sufficiently increased revenue per cwt. on the long haul which is competitively available to truck service (a premium transportation service) that it now is feasible for motor carriers with operating ratios of better than 95 per cent to bid on the long haul and, of course, high-rated traffic. By the consequent loss of this cream of the traffic the rail revenues have remained relatively static in an inflationary period of rising costs, regardless of the progressive rise in the rate level caused by successive Ex Parte rate increases.

(29) Q. In connection with the decision to publish the rates under investigation, what conclusions were reached

by the New Haven's management from the facts and opinions which you have just given us?

A. All of the preceding facts have led us to only one [fol. 703] conclusion: It is vitally necessary that an adjustment be made in rail rates governing or affecting the movement of Manufactured and Miscellaneous articles in order for the New Haven to participate in an adequate share of this traffic. Furthermore, it has become clear to us that the past practice of rail rate making based on what the traffic will bear must be modified. Such rate making at one time did not merit criticism because something had to be done to offset passenger deficits. However, instead of helping that situation, the maintenance of high rates on the most profitable traffic has simply resulted in the diversion of this traffic to other forms of transportation. A lower rate on such traffic can produce a substantial profit, and the retention and regaining of this traffic will inevitably result in better operating ratios. In consequence, some form of all-commodity rate publication by which to compete with private and common carrier highway operations has become not only common sense but also a vital necessity.

(30) Q. What has rail management in the Eastern District done about the problems you describe?

A. The situation I have outlined has been plain to rail management in the Eastern District for several years and the only question has been what to do about it. The form of rate making first adopted to arrest this erosion of high grade rail traffic has been Plan III TOFC rates. Trailer-on-flat-car service and rates are far from new. Commission records reflect their use as early as 1926, *Container Service*, [fol. 704] 182 I.C.C. 653, 657 (No. 21723, 1932), and all-commodity TOFC rates published to meet motor truck competition were published by the St. Louis Southwestern Railway Company in 1932. *Vehicle Container Rates in Southwest*, 196 I.C.C. 127, 128, 131 (I & S 3797, 1933, Div. 2). In *Trucks on Flat Cars between Chicago and Twin Cities*, 216 I.C.C. 435, 438-439 (I & S 4186, 1936), the Commission approved all-commodity TOFC rates, applicable to shipments tendered in the shipper's container, which were 16.7% of First Class. This history is partially reviewed in *Movement of Highway Trailers by Rail*, 293 I.C.C. 93, 104-

105 (No. 31375, 1954). Since then TOFC rates made for motor carriers (really, divisions with motor carriers in the course of supplying substitute rail-for-motor service) have been called Plan I TOFC rates; rail rates covering pick-up and delivery, and carriage in the railroad's trailer on the flat car, applicable to commodities and to classes of commodities, have been called Plan II TOFC rates; and rail rates applicable to all-commodities contained in the shipper's container are called Plan III TOFC rates.

In the middle of 1958 the Erie, then the Pennsylvania, the New York Central, the B & O and other roads serving New York and Philadelphia published Plan III TOFC rates covering movements between these eastern termini on the one hand, and Chicago and East St. Louis, Ill. on the other. These rates were expressed in terms of charges per a maximum consignment of 70,000 pounds contained in not more than two shippers' semi-trailers to be carried aboard not more than one flat car. They covered the service of loading and unloading the flat car only, and not the trailer. [fol. 705] and transportation between rail ramp yards only. To make use of them the shipper must supply or pay for his own trailers and make his own arrangements for drayage to and from the rail ramp yards. Like such rates were published to and from New England by the New York Central, the Boston & Maine Railroad, and the New Haven Railroad and their connections. These rates were:

| Between | and | |
|---------------------|----------------------|----------|
| Boston, Mass. | Chicago, Ill. | \$494.50 |
| Boston, Mass. | Hammond, Ind. | \$494.50 |
| Boston, Mass. | East St. Louis, Ill. | \$600.00 |
| Springfield, Mass. | Chicago, Ill. | \$445.50 |
| Springfield, Mass. | Hammond, Ind. | \$445.50 |
| Springfield, Mass. | E. St. Louis, Ill. | \$551.50 |
| Harlem River, N. Y. | Chicago, Ill. | \$451.50 |
| Harlem River, N. Y. | Hammond, Ind. | \$451.50 |
| Harlem River, N. Y. | E. St. Louis, Ill. | \$519.00 |

Rates to and from New Haven, Conn., Providence, R. I. and Worcester, Mass., all points intermediate to Boston, were made identical with the Boston rates.

Several characteristics of these rates become immediately apparent. Firstly, inherent in them is a major classification principle, namely that arising out of the density of the lading. Light-loading articles which cannot make the 70,000 pound maximum weight in two semi-trailers to which the Plan III rate is applicable move at a higher rate per cwt. than heavy-loading articles. Use of Plan III TOFC service always requires drayage and the ownership or rental of trailers, expenses which the patron need not pay when using siding-to-siding box car service. The amount of this expense will vary depending on how close the patron's loading or receiving dock is to the rail ramp yard, the rates published by local drayage operators, and the prices at [fol. 706] which shippers can locally buy or lease or rent semi-trailers. Some of the rail carriers involved were in a position through subsidiary companies to offer the shipper drayage service and trailer rental service. In the New Haven's territory the New York Central's subsidiary provides patrons with such services. The rental charge per trailer is \$18.00 for each one-way trip, and drayage between the rail ramp yard and points within the terminal area is provided at \$20.00 or less per trailer. Therefore the full cost to a patron for a one-way movement of two semi-trailers each loaded with 35,000 pounds via the New York Central's Plan III TOFC service from Boston to Chicago is \$494.50 for the rail line-haul charge, \$36.00 for the trailer rental charge, and \$80.00 for the drayage at each end, or a total of \$610.50.

(31) Q. Please summarize the facts which are the reasons why the New Haven has concurred in and has published the box car rates under investigation in addition to the Plan III TOFC rates you have just described.

A. A rate adjustment suited to the New Haven's needs should make use of the New Haven's existing empty car capacity. Mr. Orner will testify about this in detail, but I recall that the Commission's report of March 6, 1959 in T & S Docket 6992, page five, found that the New Haven dispatches empty box cars to Chicago, St. Louis and beyond with a daily empty capacity of 9,720 net tons. A rate adjustment which fails to permit use of this already moving empty box car capacity also fails to reflect the economic

advantages to the public inherent in this situation. There-
[fol. 707] fore the New Haven first sought permission to
substitute two box cars for a single flat car in Plan III
service. Permission to do so was denied in I & S Docket
No. 6992 by an order entered March 6, 1959. The New
Haven has also sought to supplement its supply of long
flat cars by substituting two short flat cars for one long
flat car, but the tariff rules providing for this were sus-
pended in I & S Docket No. 7022 (the suspension has since
expired and these rules are effective). It became apparent
that a supplementary alternative to Plan III TOFC rates
had to be found for the New Haven, and the rates now
under investigation are that alternative.

Plan III TOFC rates to and from the New Haven's ter-
ritory became effective during the last half of 1958. Via
the New York Central they became effective July 21, 1958.
During the succeeding two months the New Haven lost to
the New York Central the equivalent of 350 to 400 cars of
traffic from Boston to St. Louis. Other shippers who had
been using the New Haven had advised me that the New
Haven will lose a considerable amount of traffic unless we
place ourselves in a position to move traffic either under
Plan III or by means of the box car rates under investiga-
tion. In short, the New Haven found itself in what in my
opinion was an intolerable situation. Of all the roads in
the Eastern District, the New Haven's need is perhaps
greater than any other to stop erosion of its traffic to high-
[fol. 708] way transportation, and to regain lost revenues,
because the New Haven's territory is that which originates
precisely the high grade traffic in sizeable volume which
has become vulnerable to truck competition. By its very
nature Plan III TOFC service expands the terminal area
and territory served by a railroad because it uses tractors
to feed rail ramp yards and these tractors are not confined
to rail terminal areas. Therefore, unless railroads whose
territories are adjacent all possess adequate capacity to
provide service under equally attractive all-commodity rate
levels, the effect of Plan III is to allow the railroad with
such rates to fill the vacuum in the territory of the road
which lacks the rates or which is unable to provide the flat
car service they call for. As I have said, the New Haven's

territory originates a large proportion of high-grade traffic. The nature of this traffic is such as to make it certain that railroads serving adjacent territory will be attracted to it, just, for that matter, as have been the New Haven's truck competitors in the past, so long as the New Haven's prices or service remain uncompetitive.

(32) Q. Have you made any survey of the competitive truck rates which today are causing the sort of diversion of rail traffic to the highway you have been describing?

A. Yes, I have tabulated a collection of motor carrier rates to Chicago from various points on the New Haven [fol. 709] Railroad and have compared them with the rates under investigation for similar quantities. This is the document marked Exhibit HDH-22. The first seven pages of Exhibit HDH-22 lists truck rates on various high grade commodities listed alphabetically from points in our territory to Chicago. The applicable minimum weights range from 18,000 pounds to 36,000 pounds, but almost all of them are confined to the range between 23,000 pounds and 30,000 pounds. All of these rates are published by the Eastern Central Motor Carriers Association. In many instances the truck rates are lower than the all-commodity box car rail rates for the same quantities. Generally the truck rates decrease as the applicable minimum weight increases. For example, the rate on 23,000 pounds of cellulose film from Boston to Chicago (Item 13 page 1) is 144 cents and the truck rate on 30,000 pounds is 133 cents per cwt. In this instance both rates are lower than the comparable rail all-commodity rate under investigation. Item 31 lists 137 cents per cwt. on 24,000 pounds from Springfield to Chicago and 129 cents on 30,000 pounds. Both rates are lower than the comparable rail all-commodity rates. In this instance the rail 20,000 pound rate is 48 per cent greater than the truck 20,000 pound rate; the rail 30,000 rate is 14 per cent higher than the truck 30,000 pound rate; and the truck 30,000 pound rate is 14 per cent higher than the rail 40,000 pound rate.

[fol. 710] Sheet 8 of Exhibit HDH-22 shows truck rates on high-grade metals such as brass and nickel silver. The \$1.30 truck rate on 32,000 pounds of copper from Providence to Chicago is only 60 per cent of the rail 20,000 pound rate

(\$216), is only 83 per cent of the rail 30,000 pound rate (\$1.56), and only 8 per cent more than the rail 40,000 pound rate (\$1.20). Bear in mind that we are comparing rates on a truck service which includes door-to-door pick up and delivery, the service of loading and unloading, and the speed of intercity truck transportation with rates on rail service which include no loading or unloading, which require the customer to install a rail siding for comparable pick up and delivery, and which cover only the customary speed of rail station-to-station service. Because these high-grade metal rates so thoroughly typify what has happened to the intercity commodity rate structure on the cream of the traffic, I have listed on sheets 9 to 12 of Exhibit HDH-22 a complete statement of truck brass, bronze and copper rates from points in the New Haven's territory to Chicago, published by Eastern Central Motor Carriers Association. The foregoing relationships to the comparable rail rates under investigation characterize almost all of these truck rates.

Paper and paper articles and printed matter are high-grade commodities. Sheets 13 through 15 compare truck rates on these with the rail rates under investigation. These rates on sheets 13 through 15 may be very roughly summarized [fol. 711] by the following mathematical averages:

| | Truck Rate | Truck Wt. | Rail Rate at | | |
|-----------------|------------|-----------|--------------|---------|---------|
| | | | 20M | 30M | 40M |
| Aggregate | \$41.96 | 6880,000 | \$47.98 | \$36.04 | \$27.59 |
| Average | \$ 1.75 | 28,333 | \$ 2.00 | \$ 1.50 | \$ 1.15 |
| Ratio | 100 | | 114 | 86 | 66 |

A similar comparison of alcoholic liquors rates listed on sheet 16 is particularly interesting:

| | Truck Rate in Bulk | Truck Wt. | Rail Rate at | | |
|-----------------|-----------------------|-----------|--------------|--------|--------|
| | | | 20M | 30M | 40M |
| Aggregate | \$4.55 | 90,000 | \$6.24 | \$4.51 | \$3.46 |
| Average | \$1.52 | 30,000 | \$2.08 | \$1.50 | \$1.15 |
| Ratio | 100 | | 137 | 99 | 76 |

A similar comparison of candy rates, Item 1, page 17, indicates that the 20,000 rail rate is 187% of the 32,000 pound truck rate; the 30,000 rail rate is 135%, and the

40,000 rail rate, requiring a minimum of 8,000 pounds more than the truck rate, is 104% of the truck rate. Relationships such as these between a fast and flexible truck service on the one hand and a slower, inflexible rail service can hardly, in my opinion, be characterized as overly competitive from the rail point of view. On the other hand, these truck rates make it abundantly plain why it has become necessary for the railroads to revise their rate structure between New England and the midwest. This necessity remains pressing even if the rates under investigation are viewed only as related to truck all-commodity rates. Exhibit HDH-22 shows that Eastern Central's all-commodity rates from Boston and Hartford to Chicago are lower than the Section 2 rates under investigation for the same quantities.

[fol. 712] (33) Q. Have you been able to develop facts which indicate what decrease below present levels of revenue on present traffic can be produced by the rates under investigation?

A. Yes. Last year we had occasion to study our traffic, excluding accounts 799 and 950 which cover all-commodity traffic, moving from New Haven origins to Chicago. My Exhibit HDH-23 lists by weight brackets the carload traffic of 10,000 pounds or over rated 71¢ per cwt. or higher, excluding commodity accounts 799 and 950, moving from New Haven Railroad origins to Chicago, Illinois during the months of July through December, 1957. The Plan III charge on a 70,000 pound shipment from Boston to Chicago equates with a per cwt. rate of 71¢, and I have assumed that both rail Plan III TOFC rates and the all-commodity box car rates under investigation can influence the movement of all of this traffic. This exhibit shows the shipments by weight groups and the effect the all-commodity, section 2 box car rates have on revenues received. The volume of traffic which could be affected by box car all-commodity rates is overstated to the extent that some of these shipments moved in tank cars and some on flat cars, etc., while the subject rates are limited to box cars. The exhibit warrants the conclusion that westbound revenue would have been reduced by no more than 9.4 per cent if this traffic

had moved under the Section 2 all-commodity rates. Of course the exhibit makes no allowance for additional traffic which will be attracted by the all-commodity rates, nor [fol. 713] does it take into account losses caused by the progressive diversion of rail tonnage to the trucks which the all-commodity rates are designed to prevent.

(34) Q. The analysis you have just discussed does not deal with traffic which in 1957 moved under all-commodity rates or with freight forwarder traffic. Have you made an analysis which attempts to assess the effect of the rates under investigation on this traffic?

A. Yes. On all-commodity traffic we have developed total volume and revenue in my Exhibit HDH-24, which shows total traffic from New Haven Railroad points to Chicago in Commodity Groups 799 and 950 for the last half of 1957. There are several significant facts to note from this exhibit. Total westbound revenue from this traffic for the six month period was more than \$2 millions. The average weight per car was about 20,000 pounds. The average westbound revenue per car was \$369.26. This average car of all-commodity traffic, if it had moved under the applicable all-commodity rate under investigation, i.e. a rate of \$2.13 per cwt., minimum weight 20,000 pounds, would have produced revenue per car of \$426.00. Therefore the section 2 rates applied to this traffic produce an increase in revenue from the average westbound car carrying all-commodity traffic of about 7.7 per cent.

[fol. 714] (35) Q. What differences are there in the rules which are applicable to the all-commodity traffic which you studied, and the rules which apply to all-commodity traffic moving under our new section 2 rates?

A. Under section 1 of our I.C.C. F-4501, Exhibit HDH-2, which contains the all-commodity rates in the form they existed in 1957, we permit various privileges that are not available under section 2 of this tariff. For example, in Item 105, Section 1, we permit the application of the so-called Rule 10 wherever the charges applicable to the specific commodities being shipped would be less than those produced by the all-commodity rate, and this may be done either on the car as a whole or on individual items included

in the car. Section 2 of the tariff does not permit this. Furthermore section 1 allows application of Rule 24 of the Classification, which in substance means that when the first car is loaded to capacity, and the consignment is not less than the applicable minimum weight, the second car will move at the carload rate applied to the actual weight in the car, regardless of how little there may be in the second car. Section 2 does not permit this. Section 1 allows a car to be stopped to complete loading enroute, or for partial unloading prior to reaching destination, a privilege excluded by Section 2. Section 1 permits so-called "marrying" of cars at intermediate points to consolidate them into one consignment for rate-making purposes, and Section 2 does not. Section 1 permits the use of any size car, regardless [fol. 715] of the weight of the lading; Section 2 forbids use of the 20,000 pound and 30,000 pound rates on cars longer than 40' 7" cars and for these the lowest rate and minimum weight are those in the 40,000 pound bracket.

In N.E.T.R. Tariff 30-M, I.C.C. No. 593, Item 535, at Boston, Mass., and New London, Conn., the New Haven Railroad will perform loading services under the so-called promiscuous loading rule, which means that if a shipper offers the railroad the equivalent of a carload or more, the rail line will load the car without regard to the minimum weight, but the shipper will be charged on the basis of the carload minimum weight regardless of the fact more than one car may be used to load the consignment. Section 1 of the tariff allows application of this rule but section 2 prohibits it because Note 4 in section 2 specifically states that charges will apply to the weight loaded in each car and not to the entire consignment. Practically all of the articles that are restricted in Section 1 are also restricted in Section 2, and in addition many other articles of high value of which risk considerable damage liability are restricted in Section 2. These are the reasons why the average carload of 20,000 pounds reflected by Exhibit HDH-24 brought in only \$369.26 per car, whereas under the Section 2 rates this car would have accrued \$426.00.

[fol. 716] (36) Q. Has your forwarder traffic been increasing in recent years under the rates which you applied to it prior to July of this year?

A. No. Exhibit HDH-25, shows the average loading of Forwarder Traffic, Account 950, originating on the New Haven, destined to points on other lines. In 1947 the average car was 17.12 tons, and in 1958 this average weight had decreased to 9.61 tons. Therefore the cost of moving a ton of forwarder freight has increased. In 1947 we carried a total of 222,000 tons and in 1958 this had decreased to 218,000 tons. The revenue from forwarder traffic of \$1.28 millions in 1947 increased to \$2.215 millions in 1958. One of the main reasons, in my opinion, why forwarder tonnage has thus decreased is the fact that we have burdened this traffic with all ex parte rate increases. As a result in many instances the forwarder has found himself unable to compete ratewise with motor carriers due to the higher cost to him of rail transportation per cwt. The rates under investigation on the one hand give the forwarder a much more competitive rate structure, and on the other hand go a considerable distance towards a much lower cost to the rail carrier of supplying the forwarder with transportation service.

(37) Q. Has your Manufactured & Miscellaneous traffic been increasing in recent years under the rates which you applied to it prior to July of this year?

A. No. My Exhibit HDH-26 lists our Manufactured & Miscellaneous Articles, Account 940, forwarded from New [fol. 717] Haven Railroad origins to points on other lines. The average load of M&M traffic is a little better than 23 tons per car. In 1947 we handled 2,941,000 tons and in 1957 this had shrunk to 1,795,000 tons, or about 60% of the 1947 volume. This substantial reduction in tonnage occurred during a period when national income rose from \$72,753 millions in 1939 to \$363,951 millions in 1957, i.e. when national income had, as I said before, increased 500%. The national income in 1947 was \$198,177 millions. During the next ten years it increased 83%.

(38) Q. Mr. Hartmann, have you made a recent study of forwarder traffic moving under section 1 rates

A. Yes, my Exhibit No. 27 is a one-day study of forwarder business which we handled from Boston to Chicago has been made and showed we handled 34 cars with a total

weight of 559,678 pounds and total revenue of \$9,964.92, resulting in 16,461 pounds average weight per car, and \$293.09 average revenue per car and \$1.78 average revenue per cwt. which is 37.6% of the first class Docket 28300 rate including Ex Parte 212, which is \$4.73 per cwt. over this distance. It is abundantly clear that the average revenue per car on 20,000 pounds under the section 2 rates is considerably greater under section 1 of the all-commodity tariff.

(39) Q. Have you moved any traffic under your section 2 rates since suspension of them was vacated July 16, 1959?

A. Yes.

[fol. 718] (40) Q. Have you a summary of all your section 2 traffic?

A. Yes. Exhibit HDH-28, shows the number of cars which moved at section 2 rates since they became effective and the revenue from these cars. This list, I have learned, is not exhaustive, and we appear to have missed some of this traffic, because in the course of conversations with shippers I have learned of tonnage moving under these rates of which I had not been informed. Exhibit HDH-28, however, is as exhaustive as I could make it, because my instructions to my office force were to get me every single carload. If there are omissions, they are the result of clerical error. I expect the section 2 rates to attract a good deal more traffic than that reflected by Exhibit HDH-28, and I do not want to suggest that the exhibit indicates the full extent of the competitive impact of these rates at all. The exhibit does, however, indicate what sort of traffic can be moved under the rates and how it moved previously.

(41) Q. In that last regard, what information have you as to the source of the section 2 traffic which you are now moving?

A. Exhibit HDH-28 separates this traffic into three groups, that which previously moved in rail box cars, that which previously moved by other than rail transportation, and that which moved partially via rail previously and partially by another mode of transportation. Because these rates have been effective only a short time, the exhibit considerably understates the proportion of the section 2 traffic

which will eventually shift from other-than-rail to rail transportation.

[fol. 719] (42) Q. You have said that Plan III TOFC rates are not entirely adequate for the New Haven's purposes competitively speaking. Have you any survey of the traffic which the New Haven has moved under Plan III TOFC rates?

A. Yes. Exhibits HDH-29 shows our Plan III traffic to Chicago for the period for August, 1959. Insofar as we can determine all of this traffic previously moved in rail box cars.

(43) Q. Have you been able to determine with respect to particular shipments via Plan III which rates produce for you the greater revenue, Plan III or all-commodity section 2 rates?

A. Yes, a review of August, 1959, Plan III waybills, Exhibit No. 29, shows that the section 2 all-commodity rates produce the greater revenue on the traffic which actually moves via Plan III.

(44) Q. What mixing rule governs Plan III TOFC rates?

A. Plan III TOFC rates are governed by a mixing rule which prohibits more than 60 per cent of the weight of any Plan III consignment from consisting of a single commodity. For example, in a 70,000 pound Plan III consignment there must be at least two commodities and one of them may not weigh more than 42,000 pounds.

(45) Q. If you applied the same rule to your all-commodity, section 2 box car rates would they be on a competitive parity in that regard with Plan III TOFC rates?

A. No.

[fol. 720] (46) Q. Why not?

A. It is possible for patrons to combine two 30,000 pound trailers to make up a single Plan III consignment, for example, each consisting of trailerloads of a single commodity. When two such straight trailerloads are thus combined they satisfy the 60 per cent Plan III mixing rule. You can see that application of this rule to the section two, 30,000 pound all-commodity box car rate would make quite a difference.

Furthermore, some shippers can load two trailers with 35,000 pounds each of commodity A, and two more with 35,000 pounds each of commodity B, each pair constituting an unmixed, straight Plan III shipment of 70,000 pounds. By repairing the trailers and tendering one "B" trailer to the rail carrier with each "A" trailer, the shipper, if he has sufficient volume of each commodity available for shipment, can ship straight shipments of 70,000 pounds each and satisfy the 60 per cent rule. Therefore application of the rule to the section two, 70,000 pound rate would again place the box car rate at a competitive disadvantage.

As a further example, when two shippers are prepared each to tender a straight trailer load weighing 20,000 pounds, each load to consist of a commodity different from the other, they can load these trailers at their separate docks and tender them together at the Plan III rail ramp yard combined on the same date under a single billing as a Plan III movement from Boston to Chicago at a charge of [fol. 721] \$494.50, and then deliver them to separate Chicago receiving docks. Under the section 2 box car rates these two 20,000 pound shipments loaded at separate box car sidings in separate box cars and destined for receivers with separate sidings would produce charges of \$852.00 ($200 \text{ cwt.} \times \$2.13 \text{ equals } \$426.00 \times 2 \text{ equals } \852.00). The only incentive of two such shippers to use the proposed rates rather than Plan III service is the avoidance of the cost of renting trailers and of draying them to and from the trailer ramp yards. In a situation such as this plainly the section 2 rates could not be competitive unless applicable to straight earloads. If the Eastern Central Motor Carrier Association's statements are to be believed concerning the rise of shippers' associations, situations such as this can be counted on to arise with consistent frequency.

For these reasons the section 2 all-commodity rates have not been limited by any 60 per cent rule and are applicable to straight or mixed earloads. In short, in view of the use of two trailers under Plan III, it is not feasible to apply a mixing rule to all-commodity box car rates designed to attract the same traffic as Plan III TOFC rates. Furthermore, in my opinion, regardless of Plan III rates, it is not feasible to publish rates which are competitive with the

truck rates and the truck service I have been describing from New England to Chicago if the rail box car rates are to be hobbled by a mixing rule.

[fol. 722] (47) Q. In publishing the all-commodity box car rates under investigation was it your purpose solely to place them on a competitive parity with Plan III TOFC rates?

A. To a degree, yes, but the principal reason for publishing them is, as I have stated, to stop the diversion of high grade rail tonnage to the highways, and to begin to attract for the railroads a reasonable share of the increased high grade tonnage which follows from the fact of our expanding economy and increasing national income. Our concern with Plan III has been to publish box car all-commodity rates that are at least low enough to attract the same sort of traffic which can economically move by Plan III.

(48) Q. Please give me your opinion concerning the competitive relationship between your box car rates and Plan III TOFC rates, and your reasons for that opinion.

A. The Section 2 box car rates are designed to attract the same traffic sought to be attracted by Plan III rates, as I say, but their principal purpose is to curtail diversion of traffic to motor carriers and to recapture traffic lost to motor carriers. The last year's experience with Plan III TOFC rates, as revealed by studies on the New Haven's lines and on the lines of virtually every other carrier concurring in the all-commodity box car rates indicates that the average Plan III TOFC consignment is in excess of 50,000 pounds. At the 50,000 pound bracket the section 2 box car rates are above existing Plan III TOFC rates. For [fol. 723] example, the Plan III rate to Chicago on 50,000 pounds, as I have said, is 99 cents per cwt., and the section 2 box car rate is 7 cents higher, 106 cents per cwt. In evaluating this comparison the facts must be borne in mind that 50,000 pounds under Plan III may be carried in two semi-trailers which together have a cubic capacity approximately that of a single box car and fifty thousand pounds under the proposed rates can move from siding to siding and do not require the shipper to own or rent containers as is the case under Plan III.

[fol. 724] In establishing the level for the section 2 rates the New Haven has had to bear in mind that among the patrons immediately interested in them are freight forwarders using the New Haven's lines. These and some other shippers originating freight on the New Haven are situated with receiving docks near the New Haven's origin ramp yards in Boston, and Springfield, and also very near the ramp yards of other railroads in these cities. In these circumstances drayage expense involved in using Plan III service is minimal, and the principal difference between Plan III and box car service is trailer rental. As noted heretofore, Flexi-Van trailers are available at a cost, on a 35,000 pound shipment in each, of a little more than 5 cents per cwt. Therefore in the circumstances obtaining in the New Haven's territory a spread on 50,000 pounds of more than the 7 cents per cwt. mentioned above of all-commodity rates over Plan III charges would be excessive if the New Haven's all-commodity rates were to attempt to attract the same traffic which Plan III TOFC rates in New England will attract.


In establishing levels for the Section 2 rates there had to be borne in mind the cost to the patron of procuring drayage in New England which would be necessary under Plan III. While the following may not represent average such costs, they are minimum rates actually made available and published by carriers in the New Haven's territory and the New Haven must be in a position to compete with any combination of these carriers' drayage service and the New York Central's trip-trailer charge (made available through its subsidiary) of \$18.00 per trailer.

* * * * *

[fol. 732]

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENTS' EXHIBIT 2.

(See opposite) 

(800)

I. C. C. F 4501
Cancels I. C. C. F 4399
C. T. C. F 434
Cancels C. T. C. F 428

The New York, New Haven and Hartford Railroad Company

IN CONNECTION WITH

CARRIERS NAMED ON PAGE 3

FREIGHT TARIFF 11-C

Cancels Freight Tariff 11-B

JOINT COMMODITY TARIFF

APPLYING ON

ALL ARTICLES

| From Stations On | To Points of Destination in |
|---|--|
| MOSHASSUCK VALLEY RAILROAD COMPANY, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY | DISTRICT OF COLUMBIA ILLINOIS IOWA INDIANA KENTUCKY MARYLAND MICHIGAN MISSOURI NEW YORK OHIO PENNSYLVANIA VIRGINIA WISCONSIN |

Governed, except as otherwise provided herein, by the Official Classification and Uniform Freight Classification and by Exceptions thereto, see Item 5, page 5.

Issued February 10, 1959

Effective March 16, 1959

[fol. 732]
BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 2

IN CONNECTION WITH

CARRIERS NAMED ON PAGE 3

FREIGHT TARIFF 11-C

Cancels Freight Tariff 11-B

JOINT COMMODITY TARIFF

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Governed, except as otherwise provided herein, by the Official Classification and Uniform Freight Classification and by Exceptions thereto, see Item 5, page 5.

Issued February 12, 1959

Effective March 16, 1959

Rates in Section 1 of this tariff are published to meet highway competition.

Agents Will Insert
Date Received

| | | |
|-------|-----|------|
| MONTH | DAY | YEAR |
| | | |

Issued by H. D. HARTMANN

Freight Traffic Manager

54 Meadow Street

NEW HAVEN 6, CONN.

FREIGHT TARIFF 11-C

ALPHABETICAL INDEX OF STATIONS TO WHICH RATES APPLY

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| Item | Subject | Rules and Other Governing Provisions |
|------|--|--|
| 5 | Description of Governing Classification and Exceptions | <p>The terms "Official Classification" and "Exceptions to Official Classification" when used herein mean, respectively:</p> <p>Official Classification No. 66, TEA-ER (Flint Series), I. C. C.-O. C. No. 66, C. T. C.-O. C. No. 66.</p> <p>Exceptions to Official Classification, Tariff No. 30-M, TEA-ER (Swenson Series) I. C. C. No. 593, C. T. C. No. 502.</p> <p>(Applicable only in connection with rates published in Section 1).</p> <p>The terms "Uniform Freight Classification" and "Exceptions to Uniform Classification" when used herein mean, respectively:</p> <p>Uniform Freight Classification 4, TEA-ER (Flint Series) I. C. C. No. A-4, C. T. C. No. O. C. A-4.</p> <p>Exceptions to Uniform Classification, Freight Tariff E-2009-C, TL-CTRTB (Hinsch Series) I. C. C. C-29, C. T. C. C-14.</p> <p>(Applicable only in connection with rates published in Section 2).</p> |
| 10 | Station Lists and Conditions | <p>This tariff is governed by the Official List of Open and Prepay Stations 73, I. C. C. A-38, C. T. C. A-38, issued by Station List Publishing Company, Agent, to the extent shown below:</p> <p>Prepay Requirements and Station Conditions</p> <p>For additions and abandonments of stations, and except as otherwise shown herein for prepay requirements, changes in names of stations, restrictions as to acceptance or delivery of freight, and changes in station facilities.</p> <p>When a station is abandoned as of date specified in the above named tariff, the rates from and to such station as published in this tariff are inapplicable on and after that date.</p> |
| 20 | Reference to Tariffs, Items, Notes, Rules, etc. | <p>(a) Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariff and reissues of such items, notes, rules, etc.</p> <p>(b) Where reference is made in this tariff to another tariff by I. C. C. Number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic, or traffic through Canada.</p> |
| 25 | Terminal or Transit Privileges or Services | <p>Shipments made under the rates contained in this tariff are entitled also to terminal and transit services and privileges, and are subject to the charges, allowances, rules and regulations legally applicable thereto, as provided in separately published, lawfully filed tariffs.</p> |
| 35 | Transfer between Connecting Carriers | <p>The joint rates published herein include all charges for switching, drayage, or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points.</p> |

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|--------------------------|-----------------|-------------------------|------------|-----------------------|-----------------|
| Darius Creek..... Mich. | 280 | Grand Rapids..... Mich. | 310 | Port Huron..... Mich. | 340 |
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| | | Muskegon..... Mich. | 330 | | |

| Item | Subject | Rules and Other Governing Provisions |
|------|--|--|
| 5 | Description of Governing Classification and Exceptions | <p>The terms "Official Classification" and "Exceptions to Official Classification" when used herein mean, respectively:</p> <p>Official Classification No. 66, TEA-ER (Flint Series), I. C. C.-O. C. No. 66, C. T. C.-O. C. No. 66.</p> <p>Exceptions to Official Classification, Tariff No. 30-M, TEA-ER (Swenson Series) I. C. C. No. 593, C. T. C. No. 502.</p> <p>(Applicable only in connection with rates published in Section 1).</p> <p>The terms "Uniform Freight Classification" and "Exceptions to Uniform Classification" when used herein mean, respectively:</p> <p>Uniform Freight Classification 4, TEA-ER (Flint Series) I. C. C. No. A-4, C. T. C. No. O. C. A-4.</p> <p>Exceptions to Uniform Classification, Freight Tariff E-2009-C, TL-CTRTB (Hinsch Series) I. C. C. C-29, C. T. C. C-14.</p> <p>(Applicable only in connection with rates published in Section 2).</p> |
| 10 | Station Lists and Conditions | <p>This tariff is governed by the Official List of Open and Prepay Stations 73, I. C. C. A-38, C. T. C. A-38, issued by Station List Publishing Company, Agent, to the extent shown below:</p> <p>Prepay Requirements and Station Conditions</p> <p>For additions and abandonments of stations, and except as otherwise shown herein for prepay requirements, changes in names of stations, restrictions as to acceptance or delivery of freight, and changes in station facilities.</p> <p>When a station is abandoned as of date specified in the above named tariff, the rates from and to such station as published in this tariff are inapplicable on and after that date.</p> |
| 20 | Reference to Tariffs, Items, Notes, Rules, etc. | <p>(a) Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariff and reissues of such items, notes, rules, etc.</p> <p>(b) Where reference is made in this tariff to another tariff by I. C. C. Number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic, or traffic through Canada.</p> |
| 25 | Terminal or Transit Privileges or Services | Shipments made under the rates contained in this tariff are entitled also to terminal and transit services and privileges, and are subject to the charges, allowances, rules and regulations legally applicable thereto, as provided in separately published, lawfully filed tariffs. |
| 35 | Transfer between Connecting Carriers | The joint rates published herein include all charges for switching, drayage, or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points. |
| 40 | Consecutive Numbers | <p>Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" or a hyphen they will be understood to include both of the numbers shown.</p> <p>If the first number only bears a reference mark such reference mark also applies to the last number shown and to all the numbers between the first and last numbers.</p> |

For explanation of abbreviations, see last page of this tariff.

FREIGHT TARIFF 11-C

| Item | Subject | Rules and Other Governing Provisions | | | | | | | | | | | | | | | | | | | | | |
|----------|---|---|----------|-----------|-------------|--------|-------------|--|--------|-------------|--|-----|-------------------------------------|---|-----|-------------------------------------|--|-----|-------------------------------------|---|-----|-------------------------------------|---|
| 95 | Alternate Application of Rates | <p data-bbox="395 354 1407 445">If the charges accruing under <i>f</i>Class and/or commodity rates in the following tariffs, supplements thereto or successive issues thereof, from and to the same points via the same routes are lower than the commodity rates published in this tariff, the lower charges resulting from such <i>f</i>class and/or commodity rates will apply.</p> <table border="1" data-bbox="371 456 1407 942"> <thead> <tr> <th data-bbox="403 496 483 520">I. C. C.</th><th data-bbox="528 496 632 520">Issued by</th><th data-bbox="967 496 1129 520">APPLICATION</th></tr> </thead> <tbody> <tr> <td data-bbox="403 542 483 566">F 4346</td><td data-bbox="496 542 655 566">NYNH&H. . .</td><td data-bbox="671 542 1407 607">Joint, Proportional and Import Freight Tariff applying on Various Commodities from Stations on the Mo&V and NYNH&H to Stations in District of Columbia, Maryland, New York and Pennsylvania.</td></tr> <tr> <td data-bbox="403 607 483 631">F 3695</td><td data-bbox="496 607 655 631">NYNH&H. . .</td><td data-bbox="671 607 1407 673">Joint Commodity Tariff applying on Iron and Steel Articles from Stations on the NYNH&H to Stations in Maryland, New York and Pennsylvania.</td></tr> <tr> <td data-bbox="443 673 483 697">272</td><td data-bbox="496 673 655 724">TEA-ER. (Swenson Series)</td><td data-bbox="671 673 1407 738">Joint and Proportional Commodity Tariff applying on Iron and Steel Articles from Stations in New England and New York to Stations in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin.</td></tr> <tr> <td data-bbox="443 738 483 762">362</td><td data-bbox="496 738 655 789">TEA-ER. (Swenson Series)</td><td data-bbox="671 738 1407 804">Joint, Proportional, Import, Intercoastal and Coastwise-Class Rate Tariff from Stations in New England to Stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin.</td></tr> <tr> <td data-bbox="443 804 483 828">450</td><td data-bbox="496 804 655 855">TEA-ER. (Swenson Series)</td><td data-bbox="671 804 1407 869">Joint Freight Tariff of Class Rates applying from Stations in Connecticut, Massachusetts and Rhode Island to Stations in Maryland, New York and Pennsylvania.</td></tr> <tr> <td data-bbox="443 869 483 893">591</td><td data-bbox="496 869 655 920">TEA-ER. (Swenson Series)</td><td data-bbox="671 869 1407 942">All Rail, Motor Rail, Rail-Water-Rail and Water Rail. Joint Proportional and Import Commodity Tariff from Stations in New England to stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin.</td></tr> </tbody> </table> <p data-bbox="395 951 1407 1017"><i>f</i>The alternation under class rate tariffs will only apply on articles taking ratings derived from the Exceptions to Official Classification (See Item 5) also on export, import, forwarding, reforwarding, coastwise or intercoastal traffic handled under such tariffs.</p> <p data-bbox="935 1017 1238 1041"><i>File 584-155-3—Docket 28300</i></p> | I. C. C. | Issued by | APPLICATION | F 4346 | NYNH&H. . . | Joint, Proportional and Import Freight Tariff applying on Various Commodities from Stations on the Mo&V and NYNH&H to Stations in District of Columbia, Maryland, New York and Pennsylvania. | F 3695 | NYNH&H. . . | Joint Commodity Tariff applying on Iron and Steel Articles from Stations on the NYNH&H to Stations in Maryland, New York and Pennsylvania. | 272 | TEA-ER. (Swenson Series) | Joint and Proportional Commodity Tariff applying on Iron and Steel Articles from Stations in New England and New York to Stations in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. | 362 | TEA-ER. (Swenson Series) | Joint, Proportional, Import, Intercoastal and Coastwise-Class Rate Tariff from Stations in New England to Stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. | 450 | TEA-ER. (Swenson Series) | Joint Freight Tariff of Class Rates applying from Stations in Connecticut, Massachusetts and Rhode Island to Stations in Maryland, New York and Pennsylvania. | 591 | TEA-ER. (Swenson Series) | All Rail, Motor Rail, Rail-Water-Rail and Water Rail. Joint Proportional and Import Commodity Tariff from Stations in New England to stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. |
| I. C. C. | Issued by | APPLICATION | | | | | | | | | | | | | | | | | | | | | |
| F 4346 | NYNH&H. . . | Joint, Proportional and Import Freight Tariff applying on Various Commodities from Stations on the Mo&V and NYNH&H to Stations in District of Columbia, Maryland, New York and Pennsylvania. | | | | | | | | | | | | | | | | | | | | | |
| F 3695 | NYNH&H. . . | Joint Commodity Tariff applying on Iron and Steel Articles from Stations on the NYNH&H to Stations in Maryland, New York and Pennsylvania. | | | | | | | | | | | | | | | | | | | | | |
| 272 | TEA-ER. (Swenson Series) | Joint and Proportional Commodity Tariff applying on Iron and Steel Articles from Stations in New England and New York to Stations in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. | | | | | | | | | | | | | | | | | | | | | |
| 362 | TEA-ER. (Swenson Series) | Joint, Proportional, Import, Intercoastal and Coastwise-Class Rate Tariff from Stations in New England to Stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. | | | | | | | | | | | | | | | | | | | | | |
| 450 | TEA-ER. (Swenson Series) | Joint Freight Tariff of Class Rates applying from Stations in Connecticut, Massachusetts and Rhode Island to Stations in Maryland, New York and Pennsylvania. | | | | | | | | | | | | | | | | | | | | | |
| 591 | TEA-ER. (Swenson Series) | All Rail, Motor Rail, Rail-Water-Rail and Water Rail. Joint Proportional and Import Commodity Tariff from Stations in New England to stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. | | | | | | | | | | | | | | | | | | | | | |
| 100 | Method of Denoting Reissued Matter in Supplements | Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number, the number being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date, consult the supplement in which the reissued matter first became effective. | | | | | | | | | | | | | | | | | | | | | |
| 105 | Application of Rates | <p data-bbox="395 1188 1407 1279">(1) When the shipment is subject to the mixture provision providing for the application of all commodity and straight carload or any quantity rates, the provisions of this tariff will not apply if the actual weight of the articles/subject to the "All Commodity" rates aggregate less than 1,500 pounds.</p> <p data-bbox="395 1279 1407 1352">Articles subject to straight carload or any quantity rates lower than the rates published in this tariff will be charged for on basis of actual or authorized estimated weight at the straight carload (see Note 1) or any quantity rate applicable to each such article (see Note 2).</p> <p data-bbox="395 1352 1407 1425">Articles subject to straight carload or any quantity rates, the same as or higher than the rates published in this tariff will be charged for on basis of the actual or authorized estimated weight, and at the carload rate (see Note 1) published in this tariff (see Note 2).</p> <p data-bbox="395 1425 1407 1490">Note 1—Where alternative rates or ratings subject to different carload minimum weights are in effect, the charges shall be obtained by use of the rate or ratings subject to the lowest carload minimum weight but not less than 30,000 pounds.</p> <p data-bbox="395 1490 1407 1556">Note 2—The carload minimum weight for the entire shipment will be as provided for in this tariff, any deficit in the minimum weight will be charged for at the carload rate published in this tariff. <i>File 587-87K; Sup. 18 to DA G-825</i></p> <p data-bbox="395 1556 1407 1665">(2) The rates and provisions of this tariff will not apply on carload consignments consisting of a single article, or two or more articles, named in the same specific item of the governing classification, exception or other tariffs lawfully on file with the Interstate Commerce Commission or state Commissions unless such consignments contain other articles having an aggregate weight in excess of 1,500 pounds. <i>File G-587-87L.</i></p> <p data-bbox="395 1665 1407 1747">(3) When the charge upon the entire shipment under the provisions of paragraph (1) is higher than the aggregate charge on basis of the carload rate and minimum weight published herein for two or more articles plus, on articles provided with any quantity rates, the charges applicable on such article on the basis of its quantity rate, such aggregate charges will apply. On articles in-</p> | | | | | | | | | | | | | | | | | | | | | |

[fol. 738]

| | | |
|--------|---------------------------------|---|
| F 3650 | NYNH&H. | Joint, Proportional and Import Freight Tariff applying on Various Commodities from Stations on the MoV and NYNH&H to Stations in District of Columbia, Maryland, New York and Pennsylvania. |
| F 3695 | NYNH&H. | Joint Commodity Tariff applying on Iron and Steel Articles from Stations on the NYNH&H to Stations in Maryland, New York and Pennsylvania. |
| 272 | TEA-ER..... (Swenson Series) | Joint and Proportional Commodity Tariff applying on Iron and Steel Articles from Stations in New England and New York to Stations in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. |
| 362 | TEA-ER..... (Swenson Series) | Joint, Proportional, Import, Intercoastal and Coastwise Class Rate Tariff from Stations in New England to Stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. |
| 459 | TEA-ER..... (Swenson Series) | Joint Freight Tariff of Class Rates applying from Stations in Connecticut, Massachusetts and Rhode Island to Stations in Maryland, New York and Pennsylvania. |
| 591 | TEA-ER..... (Swenson Series) | All Rail, Motor Rail, Rail-Water-Rail and Water Rail, Joint Proportional and Import Commodity Tariff from Stations in New England to stations in Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio and Wisconsin. |

‡The alternation under class rate tariffs will only apply on articles taking ratings derived from the Exceptions to Official Classification (See Item 5) also on export, import, forwarding, reforwarding, coastwise or intercoastal traffic handled under such tariffs.

File 684-155-3—Docket 28300

100 **Method of Denoting Reissued Matter in Supplements**

Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number, the number being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date, consult the supplement in which the reissued matter first became effective.

105 **Application of Rates**

(1) When the shipment is subject to the mixture provision providing for the application of all commodity and straight carload or any quantity rates, the provisions of this tariff will not apply if the actual weight of the articles subject to the "All Commodity" rates aggregate less than 1,500 pounds.

Articles subject to straight carload or any quantity rates lower than the rates published in this tariff will be charged for on basis of actual or authorized estimator weight at the straight carload (see Note 1) or any quantity rate applicable to each such article (see Note 2).

Articles subject to straight carload or any quantity rates, the same as or higher than the rates published in this tariff will be charged for on basis of the actual or authorized estimated weight, and at the carload rate (see Note 1) published in this tariff (see Note 2).

Note 1—Where alternative rates or ratings subject to different carload minimum weights are in effect, the charges shall be obtained by use of the rate or ratings subject to the lowest carload minimum weight but not less than 30,000 pounds.

Note 2—The carload minimum weight for the entire shipment will be as provided for in this tariff, any deficit in the minimum weight will be charged for at the carload rate published in this tariff.

File 587-87K; Sup. 16 to DA G-825

(2) The rates and provisions of this tariff will not apply on carload consignments consisting of a single article, or two or more articles, named in the same specific item of the governing classification, exception or other tariffs lawfully on file with the Interstate Commerce Commission or state Commissions unless such consignments contain other articles having an aggregate weight in excess of 1,500 pounds.

File G-587-87L

(3) When the charge upon the entire shipment under the provisions of paragraph (1) is higher than the aggregate charge on basis of the carload rate and minimum weight published herein for two or more articles plus, on articles provided with any quantity rates, the charges applicable on such article on the basis of its quantity rate, such aggregate charges will apply. On articles included in the carload shipment on which any quantity rate is applied, the weight thereof can not be used to make up the carload minimum weight.

(4) When the commodity rate published in this tariff is applied from or to an intermediate point under the provisions of Item 80 or Item 85 of this tariff, the rate to be applied from or to the intermediate point on each article provided with a carload rate lower than the commodity rate published in this tariff will be the carload rate that would be applicable if shipped in a straight carload from or to the intermediate point.

(5) When shipments are subject to Rule 24 of the Official Classification, the car carrying the excess amount of freight will be subject to a minimum weight of 6,000 pounds, any deficit in the weight to make up the minimum weight of 6,000 pounds shall be charged at the commodity rate published in this tariff.

(Continued on next page)

For explanation of abbreviations, see last page of this tariff.

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FREIGHT TARIFF 11-C

| Item | Subject | Rules and Other Governing Provisions |
|--------------------|---|---|
| 105 (Continued) | Application of Rates | <p>(6) The articles named in Item 110 will not be handled under the provisions of this item.</p> <p>(7) Where the mixed carload contains any one article the weight of which is more than 50% of the weight of the lading or the minimum weight applicable to such mixed carload, whichever is higher, the minimum charge for the mixed carload will be the charge that would apply on such article at its straight carload rate and actual or minimum weight whichever is greater. Where there are alternating carload rates or ratings and minimum weights the minimum carload charge will be based upon the carload rate and applicable minimum weight that produces the highest charge.</p> <p>(Departure from the terms of Rules 4(c), 4(i), 7(b), 7(c) and 27 of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission, No. 73193 of June 24, 1957. <i>File 587-27, NETR G-1148</i>)</p> |
| 110 | Prohibited and Restricted Articles and Other Restrictions | <p>(a) Articles must be in such condition and so prepared for shipment as to render the transportation thereof reasonably safe and practicable.</p> <p>(b) Bank Bills, Coin or Currency, Deeds, Drafts, Notes or Valuable Papers of any kind; Jewelry; Postage Stamps or articles with Postage Stamps affixed; Precious Metal or Articles, manufactured therefrom; Precious Stones; Revenue Stamps, or other articles of extraordinary value will not be accepted for shipment nor as premiums accompanying other articles.</p> <p>(c) Rates and other provisions of this tariff will not apply on the following articles:</p> <p>Animals, live.</p> <p>Articles, classed as "Class A Explosives" or "Class B Explosives" in the List of Explosives and other "Dangerous Articles" in Agent H. A. Campbell's I. C. C. No. 10, supplements thereto or reissues thereof.</p> <p>Articles, requiring Refrigeration.</p> <p>Articles or commodities liable to impregnate or otherwise damage equipment or other freight.</p> <p>Articles or commodities not in such condition or not so prepared for shipment as to render transportation thereof reasonably safe and practical.</p> <p>Articles or commodities which because of length cannot be loaded through side door of car.</p> <p>Articles on which shipper requests heater car service will not be accepted, unless a minimum of 10,000 pounds is tendered on one day from one origin to one destination for loading in one heater car. (Section 5 of Rule 24 of Official Classification will not apply.) <i>File NE G-11526</i></p> <p>Automobiles, Passenger or Freight, set up, also Passenger or Freight Automobile Chassis. <i>File N-1225-97</i></p> <p>Automobile Bodies, set up.</p> <p>Bones, ground.</p> <p>Bulk Freight.</p> <p>Clams, Crabs, Lobsters, Oysters and Shrimp, fresh or frozen.</p> <p>Clothing, Fur, Fur Lined, noibn, in Official Classification, other than Cattle, Cat, Coney, Dog, Goat, Horse, Rabbit or Sheep Hides or Skins, in boxes or in trunks, locked and sealed with metal seals, when classified higher than first class in Official Classification.</p> <p>Evergreens, Decorative, Cut (as described in Items 35490 to 35540 in Official Classification.)</p> <p>Fertilizer and Fertilizer Material.</p> <p>Fish, fresh or frozen, pickled or smoked.</p> <p>Florist Stock (as described in Items 39090 to 39310, in Official Classification), except dry flower roots. (Pips), in bulbs or tubers, noibn, and Peony Bulbs, in bags, bales, barrels, boxes, or crates, as shown in Items 39100, 39150, 39160 and 39180 in Official Classification.</p> <p>Flowers, except Artificial</p> <p>Frog Legs.</p> <p>Fruits, fresh or green.</p> <p>Game.</p> <p>Glassware, cut, noibn, in Official Classification, (see Note), actual value exceeding \$30.00 per 100 pounds.</p> <p>Note: Shipper must certify on shipping order and bill of lading the actual value of the property as follows: The actual value of the cut Glassware is hereby specifically stated by shipper to be \$..... per 100 pounds.</p> <p>Glassware, other than cut, noibn, (see Note), actual value exceeding \$30.00 per 100 pounds.</p> <p>Note: Shipper must certify on shipping order and bill of lading the actual value of the property as follows: The actual value of the Glassware, other than cut, is hereby specifically stated by shipper to be \$..... per 100 pounds.</p> <p>Hides and Skins, not dried, except when packed in tight barrels or casks.</p> <p>Hides, Pelts or Skins, dressed or tanned, and Fur, Hair or Wool not removed, noibn, in Official Classification.</p> <p>Hoofs and Horns, animal.</p> <p>Ice.</p> <p>Ice Cream.</p> <p>Lime, Common, including Magnesium Lime, hydrated, quick or slaked.</p> <p>Lye, concentrated, in bulk in barrels.</p> <p>Meats, fresh, dressed, pickled or smoked.</p> <p>Melons.</p> <p>Milk and Cream, fresh.</p> <p>Neatsfoot Stock.</p> |

**Prohibited and
Restricted Articles
and Other
Restrictions**

(a) Articles must be in such condition and so prepared for shipment as to render the transportation thereof reasonably safe and practicable.

(b) Bank Bills, Coin or Currency, Deeds, Drafts, Notes or Valuable Papers of any kind; Jewelry; Postage Stamps or articles with Postage Stamps affixed; Precious Metal or Articles, manufactured therefrom; Precious Stones; Revenue Stamps, or other articles of extraordinary value will not be accepted for shipment nor as premiums accompanying other articles.

(c) Rates and other provisions of this tariff will not apply on the following articles:

Animals, live.

Articles, classed as "Class A Explosives" or "Class B Explosives" in the List of Explosives and other "Dangerous Articles" in Agent H. A. Campbell's I. C. C. No. 10, supplements thereto or reissues thereof.

Articles, requiring Refrigeration.

Articles or commodities liable to impregnate or otherwise damage equipment or other freight Articles or commodities not in such condition or not so prepared for shipment as to render transportation thereof reasonably safe and practical.

Articles or commodities which because of length cannot be loaded through side door of car.

Articles on which shipper requests heater car service will not be accepted, unless a minimum of 10,000 pounds is tendered on one day from one origin to one destination for loading in one heater car. (Section 5 of Rule 24 of Official Classification will not apply.) *File NE G-11526*

Automobiles, Passenger or Freight, set up, also Passenger or Freight Automobile Chassis.

Automobile Bodies, set up.

File N-1323-97

Bones, ground.

Bulk Freight.

Clams, Crabs, Lobsters, Oysters and Shrimp, fresh or frozen.

Clothing, Fur, Fur Lined, noibn, in Official Classification, other than Cattle, Cat, Coney, Dog, Goat, Horse, Rabbit or Sheep Hides or Skins, in boxes or in trunks, locked and sealed with metal seals, when classified higher than first class in Official Classification.

Evergreens, Decorative, Cut (as described in Items 35490 to 35540 in Official Classification.)

Fertilizer and Fertilizer Material.

Fish, fresh or frozen, pickled or smoked.

Florist Stock (as described in Items 39090 to 39310, in Official Classification), except dry flower roots, (Pips), in bulbs or tubers, noibn, and Peony Bulbs, in bags, bales, barrels, boxes, or crates, as shown in Items 39100, 39150, 39160 and 39180 in Official Classification.

Flowers, except Artificial

Frog Legs.

Fruits, fresh or green.

Game.

Glassware, cut, noibn, in Official Classification, (see Note), actual value exceeding \$30.00 per 100 pounds.

Note: Shipper must certify on shipping order and bill of lading the actual value of the property as follows: The actual value of the cut Glassware is hereby specifically stated by shipper to be \$..... per 100 pounds.

Glassware, other than cut, noibn, (see Note), actual value exceeding \$30.00 per 100 pounds.

Note: Shipper must certify on shipping order and bill of lading the actual value of the property as follows: The actual value of the Glassware, other than cut, is hereby specifically stated by shipper to be \$..... per 100 pounds.

Hides and Skins, not dried, except when packed in tight barrels or casks.

Hides, Pelts or Skins, dressed or tanned, and Fur, Hair or Wool not removed, noibn, in Official Classification.

Hoofs and Horns, animal.

Ice.

Ice Cream.

Lime, Common, including Magnesium Lime, hydrated, quick or slaked.

Lye, concentrated, in bulk in barrels.

Meats, fresh, dressed, pickled or smoked.

Melons.

Milk and Cream, fresh.

Neatfoot Stock.

Nursery Stock (as described in Items 70860 to 70940 of Official Classification.)

Oleo Stock.

Ores, noibn, in Official Classification.

Poultry and Pigeons, Live.

Roe, fish, fresh.

Sausage, fresh.

Vegetables, fresh or green.

Yeast, Compressed.

File NET R G-2861; N-1320-371, N-1537-110

Continued on next page

For explanation of abbreviations, see last page of this tariff.

FREIGHT TARIFF 11-C

RATE TABLE

SECTION 1.

| Item | Applying On | | | |
|------------|---|---|--|---------------------------------|
| 200 | All Articles named in Official Classification and Exceptions thereto (except as provided in Items 95, 106 and 110) in mixed carload shipments of two or more of the Articles. See Item 105 for application of rates. For rates to be used in connection with this item, see Items 210 to 350. <i>File 537-87</i> | | | |
| | From | To | Carload Minimum Weight in Pounds | Rate in Cents per 100 pounds |
| 210 | East Providence Wharf..... R. I. Fox Point..... R. I. Providence..... R. I. Worcester..... Mass. | Baltimore..... Md. | 40,000 | 91 |
| | | | <i>File NETR G-3537, G-6282</i> | |
| 220 | Boston..... Mass. | (Baltimore..... Md. Binghamton..... N. Y. Utica..... N. Y.) | 30,000 30,000 30,000 | 138 92 92 |
| | | | <i>File NETR G-2123, N 1220-59</i> | |
| 225 | Bridgeport..... Conn. Fall River..... Mass. Hartford..... Conn. Mamaroneck..... N. Y. Meriden..... Conn. New Bedford..... Mass. New Britain..... Conn. New Haven..... Conn. New London..... Conn. Pittsfield..... Mass. Poughkeepsie..... N. Y. Providence..... R. I. South Norwalk..... Conn. Springfield (Columbus Avenue)..... Mass. Springfield (Taylor Street)..... Mass. Stamford..... Conn. Wallingford..... Conn. Waterbury..... Conn. Worcester..... Mass. | Binghamton..... N. Y. | 30,000 | 92 |
| | | | <i>File N 1220-177, N-1220-429</i> | |
| 230 | Bristol..... R. I. Fall River..... Mass. New Bedford..... Mass. Springfield (Columbus Ave.)..... Mass. Springfield (Taylor Street)..... Mass. Wallingford..... Conn. Westfield..... Mass. Worcester..... Mass. Pittsfield..... Mass. Poughkeepsie..... N. Y. | (Black Rock..... N. Y. Buffalo..... N. Y.) | 30,000 | 132 |
| | <i>File NETR 537-87</i> | (Black Rock..... N. Y. Buffalo..... N. Y.) | 30,000 | 109 |
| 240 | Boston..... Mass. Bridgeport..... Conn. East Providence Wharf..... R. I. Fox Point..... R. I. Harbor Junction Wharf..... R. I. Harlem River..... N. Y. | (Black Rock..... N. Y. Buffalo..... N. Y. Niagara Falls..... N. Y. North Tonawanda..... N. Y. Rochester..... N. Y.) | 30,000 30,000 30,000 30,000 30,000 | 132 132 132 132 115 |
| 250 | Hartford..... Conn. Mamaroneck..... N. Y. Meriden..... Conn. New Britain..... Conn. New Haven..... Conn. New London..... Conn. | (Black Rock..... N. Y. Buffalo..... N. Y. Niagara Falls..... N. Y. North Tonawanda..... N. Y. Rochester..... N. Y.) | 30,000 30,000 30,000 30,000 30,000 | 132 132 132 132 115 |
| 260 | Northampton..... Mass. Providence..... R. I. South Norwalk..... Conn. | (Black Rock..... N. Y. Buffalo..... N. Y.) | 30,000 30,000 | 132 132 |

[fol. 742]

| | | | | |
|-----|---|---|--|---------------------------------|
| 210 | East Providence Wharf..... R. I. Fox Point..... R. I. Providence..... R. I. Worcester..... Mass. | Baltimore..... Md. | 40,000 | 91 |
| | | | File NETR G-3537, G-3538 | |
| 220 | Boston..... Mass. | Baltimore..... Md. Binghamton..... N. Y. Utica..... N. Y. | 30,000 30,000 30,000 | 138 92 92 |
| | | | File NETR G-3123, N 1220-59 | |
| 225 | Bridgeport..... Conn. Fall River..... Mass. Hartford..... Conn. Mamaroneck..... N. Y. Meriden..... Conn. New Bedford..... Mass. New Britain..... Conn. New Haven..... Conn. New London..... Conn. Pittsfield..... Mass. Poughkeepsie..... N. Y. Providence..... R. I. South Norwalk..... Conn. Springfield (Columbus Avenue)..... Mass. Springfield (Taylor Street)..... Mass. Stamford..... Conn. Wallingford..... Conn. Waterbury..... Conn. Worcester..... Mass. | Binghamton..... N. Y. | 30,000 | 92 |
| | | | File N 1220-177, N-1220-429 | |
| 230 | Bristol..... R. I. Fall River..... Mass. New Bedford..... Mass. Springfield (Columbus Ave.)..... Mass. Springfield (Taylor Street)..... Mass. Wallingford..... Conn. Westfield..... Mass. Worcester..... Mass. Pittsfield..... Mass. Poughkeepsie..... N. Y. | {Black Rock..... N. Y. Buffalo..... N. Y.} | 30,000 | 132 |
| | File NETR 437-27 | {Black Rock..... N. Y. Buffalo..... N. Y.} | 30,000 | 109 |
| 240 | Boston..... Mass. Bridgeport..... Conn. East Providence Wharf..... R. I. Fox Point..... R. I. Harbor Junction Wharf..... R. I. Harlem River..... N. Y. | {Black Rock..... N. Y. Buffalo..... N. Y. Niagara Falls..... N. Y. North Tonawanda..... N. Y. Rochester..... N. Y.} | 30,000 30,000 30,000 30,000 30,000 | 132 132 132 132 115 |
| 250 | Hartford..... Conn. Mamaroneck..... N. Y. Meriden..... Conn. New Britain..... Conn. New Haven..... Conn. New London..... Conn. | {Black Rock..... N. Y. Buffalo..... N. Y. Niagara Falls..... N. Y. North Tonawanda..... N. Y. Rochester..... N. Y.} | 30,000 30,000 30,000 30,000 30,000 | 132 132 132 132 115 |
| 260 | Northampton..... Mass. Providence..... R. I. South Norwalk..... Conn. South Providence..... R. I. Stamford..... Conn. Waterbury..... Conn. Waterbury (Dublin Street)..... Conn. | {Black Rock..... N. Y. Buffalo..... N. Y. Niagara Falls..... N. Y. North Tonawanda..... N. Y. Rochester..... N. Y.} | 30,000 30,000 30,000 30,000 30,000 | 132 132 132 132 115 |
| | File N1220-429 | | | |
| 265 | Harlem River..... N. Y. | {Baltimore..... Md. Philadelphia (See Item 125) Pa. Washington..... D. C.} | 30,000 30,000 30,000 | 99 75 105 |
| | File 1220-49 | | | |
| | Rates to Baltimore, Md. and Washington, D. C. will only apply via Routes 1 and 65. Rate to Philadelphia, Pa., will only apply via Routes 1 and 60. (For explanation of routes, see page 28). | | | |

[fol. 742]

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For explanation of abbreviations and reference marks, see last page of this tariff.

SECTION 1.

RATE TABLE

| Item | APPLYING ON | | | | | |
|---|--------------------------|------------------------------|--|-----------------------|-------------------------|-------------------------------|
| All Articles, as described in Item 200. Carload minimum weight 30,000 pounds. | | | | | | |
| TO | | FROM | | | | |
| | | Boston..... Mass. | Bridgeport..... Conn. | Pittsfield..... Mass. | Poughkeepsie..... N. Y. | Saylesville (Moav)..... R. I. |
| | | Bristol..... R. I. | Harlem River..... N.Y. | | | |
| | | Cabot..... Mass. | Hartford..... Conn. | | | |
| | | Clinton..... Mass. | Mamareneck..... N.Y. | | | |
| | | East Providence | Meriden..... Conn. | | | |
| | | Wharf..... R. I. | New Britain..... Conn. | | | |
| | | Fall River..... Mass. | New Haven..... Conn. | | | |
| | | Fitchburg..... Mass. | Northampton..... Mass. | | | |
| | | Fox Point..... R. I. | South | | | |
| | | Harbor Junction | Newark..... Conn. | | | |
| | | Wharf..... R. I. | Springfield (Columbus Avenue)..... Mass. | | | |
| | | New Bedford..... Mass. | Springfield (Taylor Street)..... Mass. | | | |
| | | New London..... Conn. | Stamford..... Conn. | | | |
| | | Providence..... R. I. | Wallingford..... Conn. | | | |
| | | South Brain- tree..... Mass. | Waterbury..... Conn. | | | |
| | | South Providence..... R. I. | Westfield..... Mass. | | | |
| | | Worcester..... Mass. | | | | |
| Rates in Cents per 100 Pounds | | | | | | |
| 280 | Akron..... Ohio | 161 | 156 | | | |
| | Allen Park..... Mich. | 173 | 166 | 161 | 161 | |
| | Ann Arbor..... Mich. | 177 | 170 | 166 | 166 | |
| | Appleton..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Aurora..... Ill. | 209 | 205 | 202 | 202 | |
| | Battle Creek..... Mich. | 187 | 185 | 179 | 179 | |
| | Bay City..... Mich. | 180 | 174 | 169 | 169 | |
| | Bloomington..... Ill. | Ⓜ215 | | | | |
| | Chicago..... Ill. | 204 | 202 | Ⓜ190 202 | Ⓜ190 | 204 |
| 290 | Cincinnati..... Ohio | 196 | 190 | 182 | 181 | |
| | Cleveland..... Ohio | 161 | 156 | 149 | 149 | |
| | Columbus..... Ind. | 204 | 204 | | | |
| | Columbus..... Ohio | 184 | 176 | 166 | 164 | |
| | Danville..... Ill. | 209 | 202 | 202 | 202 | 209 |
| | Davenport..... Ia. | 228 | 221 | 221 | 221 | |
| 300 | Dayton..... Ohio | 190 | 184 | Ⓜ176 184 | 176 | |
| | Decatur..... Ill. | 215 | 209 | 209 | 209 | |
| | Detroit..... Mich. | 173 | 166 | 161 | 161 | |
| | Dubuque..... Ia. | 233 | 225 | 225 | 225 | |
| | East St. Louis..... Ill. | 233 | 225 | Ⓜ220 225 | 220 | |
| | Elgin..... Ill. | 209 | 205 | 202 | 202 | |
| 310 | Evansville..... Ind. | 221 | 214 | 213 | 213 | |
| | Flint..... Mich. | 176 | 170 | 166 | 166 | |
| | Fond du Lac..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Port Wayne..... Ind. | 185 | 184 | 179 | 179 | |
| | Gary..... Ind. | 204 | 202 | 190 | 190 | |
| | Grand Rapids..... Mich. | 187 | 185 | 179 | 179 | |
| | Green Bay..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Harvard..... Ill. | Ⓜ214 | | | | |
| 320 | Indianapolis..... Ind. | 201 | 194 | 190 | 190 | |
| | Jackson..... Mich. | 182 | 177 | 170 | 170 | |
| | Joliet..... Ill. | 204 | 202 | 197 | 197 | |
| | Kalamazoo..... Mich. | 187 | 185 | 179 | 179 | |
| | Kenosha..... Wis. | 204 | 202 | 197 | 197 | |
| | La Fayette..... Ind. | 202 | 195 | 195 | 195 | |
| | Lansing..... Mich. | 182 | 177 | 170 | 170 | |
| | Lima..... Ohio | 181 | 176 | 169 | 169 | 181 |
| 330 | Louisville..... Ky. | 209 | 203 | 197 | 197 | |
| | Madison..... Wis. | 215 | | 209 | 209 | 215 |

| TO | | East Providence Wharf..... R. I. Fall River..... Mass. Fitchburg..... Mass. Fox Point..... R. I. Harbor Junction Wharf..... R. I. New Bedford..... Mass. New London..... Conn. Providence..... R. I. South Brain- tree..... Mass. South Provi- dence..... R. I. Watuppa..... Mass. Worcester..... Mass. | Mamareneek N.Y. Meriden..... Conn. New Britain..... Conn. New Haven..... Conn. Northampton..... Mass. South Norwalk..... Conn. Springfield (Colum- bus Avenue)..... Mass. Springfield (Taylor Street)..... Mass. Stamford..... Conn. Wallingford..... Conn. Waterbury..... Conn. Westfield..... Mass. | Pittsfield..... | Toughkeepsie..... | Barleesville (Moosv.)..... |
|-------------------------------|--------------------------|--|---|-----------------|-------------------|----------------------------|
| Rates in Cents per 100 Pounds | | | | | | |
| 280 | Akron..... Ohio | 161 | 156 | | | |
| | Allen Park..... Mich. | 173 | 166 | 161 | 161 | |
| | Ann Arbor..... Mich. | 177 | 170 | 166 | 166 | |
| | Appleton..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Aurora..... Ill. | 209 | 205 | 202 | 202 | |
| | Battle Creek..... Mich. | 187 | 185 | 179 | 179 | |
| | Bay City..... Mich. | 180 | 174 | 169 | 169 | |
| | Bloomington..... Ill. | ⊕215 | | | | |
| | Chicago..... Ill. | 204 | 202 | ⊕190 202 | ⊕190 | 204 |
| 290 | Cincinnati..... Ohio | 196 | 190 | 182 | 181 | |
| | Cleveland..... Ohio | 161 | 156 | 149 | 149 | |
| | Columbus..... Ind. | 204 | 204 | | | |
| | Columbus..... Ohio | 184 | 176 | 166 | 164 | |
| | Danville..... Ill. | 209 | 202 | 202 | 202 | 209 |
| | Davenport..... Ia. | 228 | 221 | 221 | 221 | |
| 300 | Dayton..... Ohio | 190 | 184 | ⊕176 184 | 176 | |
| | Decatur..... Ill. | 215 | 209 | 209 | 209 | |
| | Detroit..... Mich. | 173 | 166 | 161 | 161 | |
| | Dubuque..... Ia. | 233 | 225 | 225 | 225 | |
| | East St. Louis..... Ill. | 233 | 225 | ⊕220 225 | 220 | |
| | Elgin..... Ill. | 209 | 205 | 202 | 202 | |
| 310 | Evansville..... Ind. | 221 | 214 | 213 | 213 | |
| | Flint..... Mich. | 176 | 170 | 166 | 166 | |
| | Fond du Lac..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Fort Wayne..... Ind. | 185 | 184 | 179 | 179 | |
| | Gary..... Ind. | 204 | 202 | 190 | 190 | |
| | Grand Rapids..... Mich. | 187 | 185 | 179 | 179 | |
| | Green Bay..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Harvard..... Ill. | ⊕214 | | | | |
| 320 | Indianapolis..... Ind. | 201 | 194 | 190 | 190 | |
| | Jackson..... Mich. | 182 | 177 | 170 | 170 | |
| | Joliet..... Ill. | 204 | 202 | 197 | 197 | |
| | Kalamazoo..... Mich. | 187 | 185 | 179 | 179 | |
| | Kenosha..... Wis. | 204 | 202 | 197 | 197 | |
| | La Fayette..... Ind. | 202 | 195 | 195 | 195 | |
| | Lansing..... Mich. | 182 | 177 | 170 | 170 | |
| | Lima..... Ohio | 181 | 176 | 169 | 169 | 181 |
| 330 | Louisville..... Ky. | 209 | 203 | 197 | 197 | |
| | Madison..... Wis. | 215 | | 209 | 209 | 215 |
| | Manitowoc..... Wis. | 204 | 202 | 197 | 197 | |
| | Marion..... Ind. | 195 | 214 | 187 | 187 | |
| | Milwaukee..... Wis. | 204 | 202 | 197 | 197 | |
| | Muncie..... Ind. | 194 | 187 | 184 | 184 | |
| | Muskegon..... Mich. | 195 | 190 | 187 | 187 | |
| | Oshkosh..... Wis. | 221 | 215 | 213 | 213 | 221 |
| | Owosso..... Mich. | 182 | 177 | 170 | 170 | |
| | Peoria..... Ill. | 220 | 214 | 213 | 213 | |

For explanation of abbreviations and reference marks, see last page of this tariff.

FREIGHT TARIFF 11-C

SECTION 2.

RATE TABLE

The provisions of Section 2 will expire with September 10, 1939, unless sooner cancelled, changed or extended.

Rates in this section are not subject to the provisions of Items 25, 80 to 95, 105, 110, 120 to 135 and 500 to 525.

| Item | Applying On | | | | | | | | | | | | |
|---------------|---|------------|---------|-------------|-------------------|-----------|---------------|-----------|-----------|----------|-----------|------------|----------|
| 4400 (New) | <p>All Articles, named in Uniform Freight Classification and Exceptions thereto, in straight or mixed carloads. (See Notes 1, 2, 3, 4 and 5 also Exceptions.) Column A—Minimum weight 20,000 pounds. Column B—Minimum weight 30,000 pounds. Column C—Minimum weight 40,000 pounds. Column D—Minimum weight 50,000 pounds. Column E—Minimum weight 60,000 pounds. Column F—Minimum weight 70,000 pounds.</p> <p>For rates to be used in connection with this item, see Items 405 to 430.</p> <p>Note 1. Rates apply on all freight in straight or mixed carloads. Applicable only on freight loaded in box cars, other than damage free or specially equipped cars.</p> <p>Note 2. Rates are subject to Rules and Regulations provided in the Uniform Freight Classification and exceptions thereto, including packing requirements except that: Rules 10, 12, 15, 16, 24, 29, 34, 35 and 38 of UFC will not apply.</p> <p>Note 3. On minimum weights of 20,000 lbs. and 30,000 lbs. rates are applicable only on shipments in box cars 40 feet 7 inches or less in length (inside measurement). Where longer cars are used by shippers or supplied by the rail carriers, the rates subject to minimum weights of 20,000 lbs. and 30,000 lbs. provided in this Item will not apply. Shipper reserves the right at any time not to accept cars over 40 feet 7 inches in length (inside measurement) for loading.</p> <p>Note 4. If, upon request of shipper, rail carrier performs the loading of car (where carrier holds itself out to perform such loading under tariffs on file with the Interstate Commerce Commission) charges will apply to the weight loaded in each car and not to the entire consignment.</p> <p>Note 5. Except as otherwise specifically provided in this item, only the following terminal service such as:</p> <table> <tr> <td>Car Rental</td><td>Loading</td></tr> <tr> <td>Car Service</td><td>Private Car Miles</td></tr> <tr> <td>Demurrage</td><td>Reconsignment</td></tr> <tr> <td>Diversion</td><td>Switching</td></tr> <tr> <td>Floatage</td><td>Unloading</td></tr> <tr> <td>Lighterage</td><td>Weighing</td></tr> </table> <p>will apply in connection with this item.</p> | Car Rental | Loading | Car Service | Private Car Miles | Demurrage | Reconsignment | Diversion | Switching | Floatage | Unloading | Lighterage | Weighing |
| Car Rental | Loading | | | | | | | | | | | | |
| Car Service | Private Car Miles | | | | | | | | | | | | |
| Demurrage | Reconsignment | | | | | | | | | | | | |
| Diversion | Switching | | | | | | | | | | | | |
| Floatage | Unloading | | | | | | | | | | | | |
| Lighterage | Weighing | | | | | | | | | | | | |

EXCEPTIONS

Rates will not apply on the following:

- Explosives and other dangerous articles as described in Classes A and B in Agent H. A. Campbell's Tariff No. 10, I. C. C. No. 10.
- Articles in bulk.
- The following items in the Uniform Freight Classification:

| | | |
|----------------|----------------|----------------|
| 10880 | 40280 | 69045 |
| 10881 | 40400 | 69050 |
| 10882 | 40570 | 69710 to 70001 |
| 11960 to 13280 | 40580 | 72705 to 73350 |
| 26660 to 26760 | 41050 | 77210 to 77211 |
| 28980 to 29210 | 41815 to 42220 | 77890 to 78050 |
| 30600 to 30742 | 42350 to 42430 | 78120 to 78240 |
| 31770 to 31930 | 42450 to 42580 | 78280 to 78300 |
| 32300 to 32620 | 42590 to 44041 | 78350 to 78370 |
| 32850 to 33230 | 44050 to 44215 | 78430 to 78510 |
| 35470 to 35473 | 44225 to 44240 | 78630 to 78691 |
| 35600 to 35751 | 51970 to 51980 | 78720 to 78771 |
| 38505 to 38611 | 52370 to 52374 | 79490 to 79494 |
| 40050 | 56920 | 80210 to 80290 |
| 40170 | 56930 to 57370 | 80330 |
| 40200 | 67780 to 68030 | 93315 to 93440 |

Transit privileges will not apply on shipments moving under provisions of this item.

Stop-off privileges will not apply on shipments moving under provisions of this item.

Rates will not apply on freight interchanged direct between rail and water carriers.

ROUTING INSTRUCTIONS

Except as otherwise indicated rates will apply via routes provided in NYNH&H I. C. C. P 3760 in connection

(New) **all Articles, named in Uniform Freight Classification and Exceptions thereto, in straight or mixed carloads.**
 (See Notes 1, 2, 3, 4 and 5 also Exceptions.)
 Column A—Minimum weight 20,000 pounds.
 Column B—Minimum weight 30,000 pounds.
 Column C—Minimum weight 40,000 pounds.
 Column D—Minimum weight 50,000 pounds.
 Column E—Minimum weight 60,000 pounds.
 Column F—Minimum weight 70,000 pounds.

For rates to be used in connection with this item, see Items 406 to 430.

Note 1. Rates apply on all freight in straight or mixed carloads. Applicable only on freight loaded in box cars, other than damage free or specially equipped cars.

Note 2. Rates are subject to Rules and Regulations provided in the Uniform Freight Classification and exceptions thereto, including packing requirements except that:

Rules 10, 12, 15, 16, 24, 29, 34, 35 and 38 of UFC will not apply.

Note 3. On minimum weights of 20,000 lbs. and 30,000 lbs. rates are applicable only on shipments in box cars 40 feet 7 inches or less in length (inside measurement). Where longer cars are used by shippers or supplied by the rail carriers, the rates subject to minimum weights of 20,000 lbs. and 30,000 lbs. provided in this Item will not apply. Shipper reserves the right at any time not to accept cars over 40 feet 7 inches in length (inside measurement) for loading.

Note 4. If, upon request of shipper, rail carrier performs the loading of car (where carrier holds itself out to perform such loading under tariffs on file with the Interstate Commerce Commission) charges will apply to the weight loaded in each car and not to the entire consignment.

Note 5. Except as otherwise specifically provided in this item, only the following terminal service such as:

| | |
|-------------|-------------------|
| Car Rental | Loading |
| Car Service | Private Car Miles |
| Demurrage | Reconsignment |
| Diversion | Switching |
| Floatage | Unloading |
| Lighterage | Weighing |

will apply in connection with this item.

EXCEPTIONS

Rates will not apply on the following:

(a) Explosives and other dangerous articles as described in Classes A and B in Agent H. A. Campbell's Tariff No. 10, I. C. C. No. 10.

(b) Articles in bulk.

(c) The following items in the Uniform Freight Classification:

| | | |
|----------------|----------------|----------------|
| 10880 | 40280 | 69045 |
| 10881 | 40400 | 69050 |
| 10882 | 40570 | 69710 to 70001 |
| 11960 to 13280 | 40580 | 72705 to 73350 |
| 26660 to 26760 | 41050 | 77210 to 77211 |
| 28980 to 29210 | 41815 to 42220 | 77890 to 78050 |
| 30600 to 30742 | 42350 to 42430 | 78120 to 78240 |
| 31770 to 31930 | 42450 to 42580 | 78280 to 78300 |
| 32300 to 32620 | 42590 to 44041 | 78350 to 78370 |
| 32850 to 33230 | 44050 to 44215 | 78430 to 78510 |
| 35470 to 35473 | 44225 to 44240 | 78630 to 78691 |
| 35600 to 35751 | 51970 to 51980 | 78720 to 78771 |
| 38505 to 38611 | 52370 to 52374 | 79490 to 79494 |
| 40050 | 56920 | 80210 to 80290 |
| 40170 | 56930 to 57370 | 80330 |
| 40200 | 67780 to 68030 | 93315 to 93440 |

Transit privileges will not apply on shipments moving under provisions of this item.

Stop-off privileges will not apply on shipments moving under provisions of this item.

Rates will not apply on freight interchanged direct between rail and water carriers.

ROUTING INSTRUCTIONS

Except as otherwise indicated rates will apply via routes provided in NYNH&H I. C. C. F 3760 in connection with the following carriers only:

| | | | | | |
|---------|-----------|------|--------|----------|--------------|
| B&O | C&O (CD) | FJ&G | LV | NYC(M) | PRR |
| B&M | C&O (PMD) | GTE | NYC(B) | NYC(W) | P&WV |
| CNE | C&EI | GTW | NYC(K) | NYC(WS) | RCo |
| CP-E | D&H | IIIT | NYC(C) | NYC&St L | Wab (Note A) |
| C of NJ | DL&W | L&HR | NYC(E) | N&W | WM |
| CVt | Erie | L&NE | | | |

Note A—Applies only via Black Rock, N. Y., Buffalo, N. Y., or Niagara Falls, Ont. (Suspension Bridge, N. Y.).

(Departure from the terms of Rules 4(c), 4(i), 7(b) and 7(c) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission No. 73193 of June 24, 1957.)

For explanation of abbreviations and reference marks see last page of this tariff.

SECTION 2.

RATE TABLE

Rates in this section are not subject to the provisions of Items 25, 80 to 95, 105, 110, 120 to 135 and 500 to 525.

| Item | Applying On | | | | | | | | | | | | | | |
|---------------|---|---|-----|-----|-----|----|----|--|-----|-----|-----|-----|-----|--|--|
| | All Articles, as described in Item 400. | | | | | | | | | | | | | | |
| | Rates in cents per 100 pounds. | | | | | | | | | | | | | | |
| | FROM | TO | | | | | | | | | | | | | |
| | | Ill. Chicago..... Ind. Gibson..... Ind. Hammond..... | | | | | | Ill. East St. Louis..... Mo. St. Louis..... | | | | | | | |
| | | COLUMN | | | | | | COLUMN | | | | | | | |
| | A | B | C | D | E | F | A | B | C | D | E | F | | | |
| 4405 (New) | Boston.....Mass. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 | | |
| | Bridgeport.....Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| | Bristol.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Cabot.....Mass. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 | | |
| | Clinton.....Mass. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| 4410 (New) | East Providence Wharf.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Fall River.....Mass. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Fitchburg.....Mass. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| | Fox Point.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Harbor Junction Wharf.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| 4415 (New) | Hartford.....Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| | Holyoke.....Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| | Meriden.....Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| | New Bedford.....Mass. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | New Britain.....Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| 4420 (New) | New Haven.....Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| | New London.....Conn. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 | | |
| | Northampton.....Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| | Pawtucket.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Pittsfield.....Mass. | 198 | 143 | 110 | 99 | 88 | 83 | 221 | 160 | 123 | 111 | 98 | 93 | | |
| | Providence.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| 4425 (New) | South Braintree.....Mass. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 | | |
| | South Norwalk.....Conn. | 210 | 151 | 117 | 105 | 93 | 89 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| | South Providence.....R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Springfield.....Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| | Stamford.....Conn. | 210 | 151 | 117 | 105 | 93 | 89 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| 4430 (New) | Wallingford.....Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 | | |
| | Waterbury.....Conn. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| | Watuppa.....Mass. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 | | |
| | Westfield.....Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 | | |
| | Worcester.....Mass. | 210 | 151 | 117 | 105 | 93 | 89 | 235 | 170 | 131 | 117 | 104 | 99 | | |

Rates in cents per 100 pounds.

| FROM | | TO | | | | | | | | | | | |
|---------------|----------------------------------|------------------------------|-----|-----|-----|----|----|-----------------------------|-----|-----|-----|-----|-----|
| | | Ill. Ind. Ind. | | | | | | Ill. Mo. | | | | | |
| | | Chicago Gibson Hammond | | | | | | East St. Louis St. Louis | | | | | |
| | | COLUMN | | | | | | COLUMN | | | | | |
| | | A | B | C | D | E | F | A | B | C | D | E | F |
| 4405 (New) | Boston..... Mass. | 213 | 154 | 118 | 104 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 |
| | Bridgeport..... Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| | Bristol..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Cabot..... Mass. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 |
| | Clinton..... Mass. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| 4410 (New) | East Providence Wharf..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Fall River..... Mass. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Fitchburg..... Mass. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| | Fox Point..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Harbor Junction Wharf..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| 4415 (New) | Hartford..... Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| | Holyoke..... Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 |
| | Meriden..... Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| | New Bedford..... Mass. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | New Britain..... Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| 4420 (New) | New Haven..... Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| | New London..... Conn. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 |
| | Northampton..... Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 |
| | Pawtucket..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Pittsfield..... Mass. | 198 | 143 | 110 | 99 | 88 | 83 | 221 | 160 | 123 | 111 | 98 | 93 |
| | Providence..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| 4425 (New) | South Braintree..... Mass. | 213 | 154 | 118 | 106 | 95 | 90 | 238 | 172 | 132 | 119 | 106 | 101 |
| | South Norwalk..... Conn. | 210 | 151 | 117 | 105 | 93 | 89 | 229 | 165 | 127 | 114 | 102 | 97 |
| | South Providence..... R. I. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Springfield..... Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 |
| | Stamford..... Conn. | 210 | 151 | 117 | 105 | 93 | 89 | 229 | 165 | 127 | 114 | 102 | 97 |
| 4430 (New) | Wallingford..... Conn. | 207 | 150 | 115 | 104 | 92 | 87 | 232 | 168 | 129 | 116 | 103 | 98 |
| | Waterbury..... Conn. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 |
| | Watuppa..... Mass. | 216 | 156 | 120 | 108 | 96 | 91 | 242 | 175 | 134 | 121 | 107 | 102 |
| | Westfield..... Mass. | 204 | 147 | 113 | 102 | 91 | 86 | 229 | 165 | 127 | 114 | 102 | 97 |
| | Worcester..... Mass. | 210 | 151 | 117 | 105 | 93 | 89 | 235 | 170 | 131 | 117 | 104 | 99 |

For explanation of abbreviations and reference marks see last page of this tariff.

[fol. 776]

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 8

I&S Docket No. 7131
Witness: H. D. Hartmann

INTERLINE FORWARDED NEW HAVEN RAILROAD
MANUFACTURED AND MISCELLANEOUS TRAFFIC ACCOUNT 940

| <u>Year</u> | <u>No. of Cars</u> | <u>No. of Tons</u> | <u>Freight Revenue</u> | <u>Average Net Tons per Car</u> | <u>Average Revenue per Car</u> | <u>Average Revenue per Ton</u> |
|-------------|--------------------|--------------------|------------------------|---------------------------------|--------------------------------|--------------------------------|
| 1947 | 125,387 | 2,941,557 | \$10,816,849 | 23.46 | 86.27 | 3.68 |
| 1948 | 114,976 | 2,715,406 | 12,349,571 | 23.62 | 107.41 | 4.55 |
| 1949 | 80,761 | 1,880,431 | 9,335,418 | 23.28 | 115.59 | 4.96 |
| 1950 | 91,557 | 2,176,411 | 10,574,208 | 23.77 | 115.49 | 4.86 |
| 1951 | 103,213 | 2,495,032 | 12,673,130 | 24.17 | 122.79 | 5.08 |
| 1952 | 97,232 | 2,396,266 | 13,169,243 | 24.64 | 135.44 | 5.50 |
| 1953 | 96,534 | 2,322,756 | 13,082,636 | 24.06 | 135.52 | 5.63 |
| 1954 | 76,056 | 1,722,073 | 9,832,663 | 22.64 | 129.28 | 5.71 |
| 1955 | 81,801 | 1,904,273 | 10,375,325 | 23.28 | 126.84 | 5.45 |
| 1956 | 83,014 | 2,043,321 | 11,056,190 | 24.61 | 133.18 | 5.41 |
| 1957 | 75,643 | 1,795,143 | 10,374,892 | 23.73 | 137.16 | 5.78 |
| 1958 | 63,399 | 1,479,902 | 8,611,951 | 23.34 | 135.84 | 5.82 |

BEFORE THE INTERSTATE COMMERCE COMMISSION 152
RESPONDENTS' EXHIBIT 9

[fol. 777]

I&S Docket No. 7131
Witness: H. D. Hartmann

INDEX OF REVENUES OF CLASS I, II AND III
CARRIERS BY RAILROAD AND MOTOR CARRIERS
OF PROPERTY COMPARED WITH NATIONAL INCOME
(1939 = 100)

| <u>Year</u> | <u>Railroads</u> | <u>Motor Carriers of Property</u> | <u>National Income</u> |
|-------------|------------------|---|----------------------------|
| 1939 | 100 | 100 | 100 |
| 1947 | 216.7 | 279.4 | 272.3 |
| 1948 | 241.6 | 340.6 | 307.0 |
| 1949 | 214.6 | 367.5 | 299.0 |
| 1950 | 237.2 | 471.7 | 332.3 |
| 1951 | 260.2 | 526.3 | 363.7 |
| 1952 | 264.9 | 557.6 | 401.4 |
| 1953 | 267.2 | 621.9 | 419.8 |
| 1954 | 234.5 | 598.0 | 414.6 |
| 1955 | 253.5 | 698.7 | 453.6 |
| 1956 | 264.8 | 735.8 | 479.9 |
| 1957 | 263.7 | 777.6 | 500.0 |

Source: Transport Economics
Bureau of Transport Economics and Statistics
Interstate Commerce Commission
January, 1959, page 8.

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 10

I&S Docket No. 7131

Witness: H. D. Hartmann

DISTRIBUTION OF INTERCITY FREIGHT TRAFFIC IN THE UNITED STATES*

1939-1957

(Millions of ton-miles)

| Year | Rail- roads <u>a</u> | Motor trucks <u>b</u> | Great Lakes <u>c</u> | Rivers and canals | Oil pipe lines | Air carri- ers | Total |
|------|----------------------------|-----------------------------|----------------------------|-------------------------|----------------------|----------------------|----------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1939 | 338 850 | 52 821 | 76 312 | 19 937 | 55 602 | 12 | 543 53 |
| 1940 | 379 201 | 62 043 | 95 645 | 22 412 | 59 277 | 14 | 618 59 |
| 1941 | 481 756 | 81 363 | 113 639 | 26 815 | 68 428 | 19 | 772 82 |
| 1942 | 645 422 | 59 896 | 122 167 | 26 398 | 75 087 | 34 | 929 80 |
| 1943 | 734 829 | 56 784 | 115 346 | 26 306 | 97 867 | 53 | 1 031 18 |
| 1944 | 746 912 | 58 264 | 118 769 | 31 386 | 132 864 | 71 | 1 088 26 |
| 1945 | 690 809 | 66 948 | 113 028 | 29 709 | 126 530 | 91 | 1 027 11 |
| 1946 | 602 069 | 81 992 | 96 022 | 27 951 | 95 727 | 93 | 903 85 |
| 1947 | 664 523 | 102 095 | 112 165 | 34 549 | 105 161 | 158 | 1 018 65 |
| 1948 | 647 267 | 116 045 | 118 707 | 443 139 | 119 597 | 223 | 1 044 97 |
| 1949 | 534 694 | 126 636 | 97 503 | 41 893 | 114 916 | 235 | 915 87 |
| 1950 | 596 940 | 172 860 | 111 687 | 51 657 | 129 175 | 318 | 1 062 63 |
| 1951 | 655 353 | 188 012 | 119 984 | 662 232 | 152 115 | 379 | 1 178 07 |
| 1952 | 623 373 | 194 607 | 104 530 | 63 837 | 157 502 | 415 | 1 144 26 |
| 1953 | 614 199 | 217 163 | 127 383 | 75 056 | 169 884 | 413 | 1 204 09 |
| 1954 | 556 557 | 214 626 | 91 175 | 82 504 | 179 203 | 397 | 1 124 46 |
| 1955 | 631 385 | 226 188 | 118 845 | 97 663 | 203 244 | 481 | 1 277 80 |
| 1956 | 655 691 | 253 751 | 110 665 | 109 313 | 229 959 | 563 | 1 368 14 |
| 1957 | 626 222 | 260 856 | 117 231 | 114 561 | 232 660 | 601 | 1 352 13 |

* Includes intercity freight traffic of private as well as contract and common carriers, except coastwise and intercoastal traffic.

a Ton-miles of freight, express, and mail of Class I, II, and III line-haul railways and electric railways.

b Highway ton-miles include movements between cities and between rural areas and urban areas; rural-to-rural movements, city deliveries and city movements to or from contiguous suburbs are omitted.

c Includes Canadian and overseas traffic on the Great Lakes.

d New coverage accounted for increases over the preceding year of 2.6 billion ton-miles in 1948, 4.3 billion in 1951, 6.4 billion in 1953, and 6.7 billion in 1954.

Source: Interstate Commerce Commission; Corps of Engineers, U. S. Army.

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 11

I&S Docket No. 7131

Witness: H. D. Hartmann.

PERCENTAGE DISTRIBUTION OF INTERCITY FREIGHT TRAFFIC
IN THE UNITED STATES

| Year | Rail-roads | Motor trucks | Great Lakes | Rivers and Canals | Oil pipe lines | Air carriers | Total |
|------|------------|--------------|-------------|-------------------|----------------|--------------|-------|
| | 1. | 2 | 3 | 4 | 5 | 6 | 7 |
| 1939 | 62.4 | 9.7 | 14.0 | 3.7 | 10.2 | - | 100.0 |
| 1940 | 61.3 | 10.0 | 15.5 | 3.6 | 9.6 | - | 100.0 |
| 1941 | 62.4 | 10.5 | 14.7 | 3.5 | 8.9 | - | 100.0 |
| 1942 | 69.5 | 6.5 | 13.1 | 2.8 | 8.1 | - | 100.0 |
| 1943 | 71.3 | 5.5 | 1.2 | 2.5 | 9.5 | - | 100.0 |
| 1944 | 68.6 | 5.4 | 10.9 | 2.9 | 12.2 | - | 100.0 |
| 1945 | 67.3 | 6.5 | 11.0 | 2.9 | 12.3 | - | 100.0 |
| 1946 | 66.6 | 9.1 | 10.6 | 3.1 | 10.6 | - | 100.0 |
| 1947 | 65.3 | 10.0 | 11.0 | 3.4 | 10.3 | - | 100.0 |
| 1948 | 61.9 | 11.1 | 11.4 | 4.1 | 11.5 | - | 100.0 |
| 1949 | 58.4 | 13.8 | 10.6 | 4.6 | 12.6 | - | 100.0 |
| 1950 | 56.2 | 16.3 | 10.5 | 4.9 | 12.1 | - | 100.0 |
| 1951 | 55.6 | 16.0 | 10.2 | 5.3 | 12.9 | - | 100.0 |
| 1952 | 54.5 | 17.0 | 9.1 | 5.6 | 13.8 | - | 100.0 |
| 1953 | 51.0 | 18.1 | 10.6 | 6.2 | 14.1 | - | 100.0 |
| 1954 | 49.5 | 19.1 | 8.1 | 7.4 | 15.9 | - | 100.0 |
| 1955 | 49.4 | 17.7 | 9.3 | 7.7 | 15.9 | - | 100.0 |
| 1956 | 48.2 | 18.7 | 8.2 | 8.0 | 16.9 | - | 100.0 |
| 1957 | 46.3 | 19.3 | 8.7 | 8.5 | 17.2 | - | 100.0 |

Source: Percentages computed from data on (HDH-9).

**BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 12**

I&S Docket No. 7131
Witness: H. D. Hartmann..

APPENDIX E - DOCKET 15879
CLASS RATE INCREASES 1931 - 1957
BY CLASSES AND MILEAGE BLOCKS.

[fol. 781]

I&S Docket No. 7131
 Witness: H. D. Hartmann

Sheet 1 of 8 Sheets

DOCKET 15879 APPENDIX E BASIC
EFFECTIVE DECEMBER 31, 1931

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 43 | 37 | 30 | 22 | 15 | 12 |
| 100 | 56 | 48 | 39 | 28 | 20 | 15 |
| 150 | 66 | 56 | 46 | 33 | 23 | 18 |
| 200 | 73 | 62 | 51 | 37 | 26 | 20 |
| 250 | 82 | 70 | 57 | 41 | 29 | 23 |
| 300 | 87 | 74 | 61 | 44 | 30 | 24 |
| 400 | 99 | 84 | 69 | 50 | 35 | 27 |
| 500 | 111 | 94 | 78 | 56 | 39 | 31 |
| 600 | 123 | 105 | 86 | 62 | 43 | 34 |
| 700 | 135 | 115 | 95 | 68 | 47 | 37 |
| 800 | 145 | 123 | 102 | 73 | 51 | 40 |
| 900 | 155 | 132 | 109 | 78 | 54 | 43 |

[fol. 782]

I&S Docket No. 7131
Witness: H. D. Hartmann

Sheet 2 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
EX PARTE 123 (10%)EFFECTIVE MARCH 28, 1936

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 47 | 41 | 33 | 24 | 17 | 13 |
| 100 | 62 | 53 | 43 | 31 | 22 | 17 |
| 150 | 73 | 62 | 51 | 36 | 25 | 20 |
| 200 | 80 | 68 | 56 | 41 | 29 | 22 |
| 250 | 90 | 77 | 63 | 45 | 32 | 25 |
| 300 | 96 | 81 | 67 | 48 | 33 | 26 |
| 400 | 109 | 92 | 76 | 55 | 39 | 30 |
| 500 | 122 | 103 | 86 | 62 | 43 | 34 |
| 600 | 135 | 116 | 95 | 68 | 47 | 37 |
| 700 | 149 | 127 | 105 | 75 | 52 | 41 |
| 800 | 160 | 135 | 112 | 80 | 56 | 44 |
| 900 | 171 | 145 | 120 | 86 | 59 | 47 |

[fol. 783]

I&S Docket No. 7131
 Witness: H. D. Hartmann

Sheet 3 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
 EX PARTE 162 (25%)

EFFECTIVE JANUARY 1, 1947

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 59 | 51 | 41 | 30 | 21 | 16 |
| 100 | 78 | 66 | 54 | 39 | 28 | 21 |
| 150 | 91 | 78 | 64 | 45 | 31 | 25 |
| 200 | 100 | 85 | 70 | 51 | 36 | 28 |
| 250 | 113 | 96 | 79 | 56 | 40 | 31 |
| 300 | 120 | 101 | 84 | 60 | 41 | 33 |
| 400 | 136 | 115 | 95 | 69 | 49 | 38 |
| 500 | 153 | 129 | 108 | 78 | 54 | 43 |
| 600 | 169 | 145 | 119 | 85 | 59 | 46 |
| 700 | 186 | 159 | 131 | 94 | 65 | 51 |
| 800 | 200 | 169 | 140 | 100 | 70 | 55 |
| 900 | 214 | 181 | 150 | 108 | 74 | 59 |

[fol. 784]

I&S Docket No. 7131
 Witness: H. D. Hartmann

Sheet 4 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
 EX PARTE 166 (30%)

EFFECTIVE JANUARY 5, 1948 (INTERIM) MAY 6, 1948
(INTERIM AND MADE PERMANENT AUGUST 21, 1948)

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 77 | 66 | 53 | 39 | 27 | 21 |
| 100 | 101 | 86 | 70 | 51 | 36 | 27 |
| 150 | 118 | 101 | 83 | 59 | 40 | 33 |
| 200 | 130 | 111 | 91 | 66 | 47 | 36 |
| 250 | 147 | 125 | 103 | 73 | 52 | 40 |
| 300 | 156 | 131 | 109 | 78 | 53 | 43 |
| 400 | 177 | 150 | 124 | 90 | 64 | 49 |
| 500 | 199 | 168 | 140 | 101 | 70 | 56 |
| 600 | 220 | 189 | 155 | 111 | 77 | 60 |
| 700 | 242 | 207 | 170 | 122 | 85 | 66 |
| 800 | 260 | 220 | 182 | 130 | 91 | 72 |
| 900 | 278 | 235 | 195 | 140 | 96 | 77 |

[fol. 785]

I&S Docket No. 7131
 Witness: H. D. Hartmann

Sheet 5 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
 EX PARTE 168 (10%)

EFFECTIVE SEPTEMBER 1, 1949

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 85 | 73 | 58 | 43 | 30 | 23 |
| 100 | 111 | 95 | 77 | 56 | 40 | 30 |
| 150 | 130 | 111 | 91 | 65 | 44 | 36 |
| 200 | 143 | 122 | 100 | 73 | 52 | 40 |
| 250 | 162 | 138 | 113 | 80 | 57 | 44 |
| 300 | 172 | 144 | 120 | 86 | 58 | 47 |
| 400 | 195 | 165 | 136 | 99 | 70 | 54 |
| 500 | 219 | 185 | 154 | 111 | 77 | 62 |
| 600 | 242 | 206 | 171 | 122 | 85 | 66 |
| 700 | 266 | 228 | 187 | 134 | 94 | 73 |
| 800 | 286 | 242 | 200 | 143 | 100 | 79 |
| 900 | 306 | 259 | 215 | 154 | 106 | 85 |

[fol. 786]

I&S Docket No. 7131
Witness: H. D. Hartmann

Sheet 6 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
EX PARTE 175 (15%)EFFECTIVE MAY 2, 1952 (INTERIM) AND DECEMBER 1, 1955 (PERMANENT)

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 98 | 84 | 67 | 49 | 35 | 26 |
| 100 | 128 | 109 | 89 | 64 | 46 | 35 |
| 150 | 150 | 128 | 105 | 75 | 51 | 41 |
| 200 | 164 | 140 | 115 | 84 | 60 | 46 |
| 250 | 186 | 159 | 130 | 92 | 66 | 51 |
| 300 | 198 | 166 | 138 | 99 | 67 | 54 |
| 400 | 224 | 190 | 156 | 114 | 81 | 62 |
| 500 | 252 | 213 | 177 | 128 | 89 | 71 |
| 600 | 278 | 239 | 197 | 140 | 98 | 76 |
| 700 | 306 | 262 | 215 | 154 | 108 | 84 |
| 800 | 329 | 278 | 230 | 165 | 115 | 91 |
| 900 | 352 | 298 | 247 | 177 | 122 | 98 |

[fol. 787]

I&S Docket No. 7131

Witness: H. D. Hartmann

Sheet 7 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
EX PARTE 196 (6%)EFFECTIVE MARCH 7, 1956

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 104 | 89 | 71 | 52 | 37 | 28 |
| 100 | 136 | 116 | 94 | 68 | 49 | 37 |
| 150 | 159 | 136 | 111 | 80 | 54 | 43 |
| 200 | 174 | 148 | 122 | 89 | 64 | 49 |
| 250 | 197 | 169 | 138 | 98 | 70 | 54 |
| 300 | 210 | 176 | 146 | 105 | 71 | 57 |
| 400 | 237 | 201 | 165 | 121 | 86 | 66 |
| 500 | 267 | 226 | 188 | 136 | 94 | 75 |
| 600 | 295 | 253 | 209 | 148 | 104 | 81 |
| 700 | 324 | 278 | 228 | 163 | 114 | 89 |
| 800 | 349 | 295 | 244 | 175 | 122 | 96 |
| 900 | 373 | 316 | 262 | 188 | 129 | 104 |

[fol. 788]

I&S Docket No. 7131
Witness: H. D. Hartmann

Sheet 8 of 8 Sheets

DOCKET 15879 APPENDIX E INCLUDING
EX PARTE 206A (14%)EFFECTIVE AUGUST 26, 1957

| <u>Miles</u> | <u>Class 1</u> | <u>Class 2</u> | <u>Class 3</u> | <u>Class 4</u> | <u>Class 5</u> | <u>Class 6</u> |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 50 | 119 | 101 | 81 | 59 | 42 | 32 |
| 100 | 155 | 132 | 107 | 78 | 56 | 42 |
| 150 | 181 | 155 | 127 | 91 | 62 | 49 |
| 200 | 198 | 169 | 139 | 101 | 73 | 56 |
| 250 | 225 | 193 | 157 | 112 | 80 | 62 |
| 300 | 239 | 201 | 166 | 120 | 81 | 65 |
| 400 | 270 | 229 | 188 | 138 | 98 | 75 |
| 500 | 304 | 258 | 214 | 156 | 107 | 86 |
| 600 | 336 | 288 | 238 | 169 | 119 | 92 |
| 700 | 369 | 317 | 260 | 186 | 130 | 101 |
| 800 | 398 | 336 | 278 | 200 | 139 | 109 |
| 900 | 425 | 360 | 299 | 214 | 147 | 119 |

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENTS' EXHIBIT 13

TOTAL FREIGHT REVENUE, MANUFACTURES AND MISCELLANEOUS FREIGHT REVENUE, FREIGHT FORWARDER FREIGHT REVENUE AND L.C.L. FREIGHT REVENUE FOR THE YEARS 1939 TO 1957, INCLUSIVE, PRODUCED IN THE EASTERN DISTRICT AND ON THE NEW HAVEN RAILROAD; ALSO THE INDEX USING 1939 AS EQUAL TO 100 AND THE PERCENT OF M&M, FF, AND LCL TO TOTAL FREIGHT REVENUE

I&S Docket No. 7131

Witness: H. D. Hartmann

Sheet 1 of 2 Sheets

EASTERN DISTRICT (Excluding Pocohontas)

| Year | Total Freight Revenue | 1939=100 | Manufactures & Miscellaneous | 1939=100 | Percent to Total Frt. Revenue | Less than Carload | 1939=100 | Percent to Total Frt. Revenue | Freight Forwarder | Percent to Total Frt. Revenue |
|------|-----------------------|----------|------------------------------|----------|-------------------------------|-------------------|----------|-------------------------------|-------------------|-------------------------------|
| 1939 | \$1 408 292 183 | 100.0 | 583 149 152 | 100.0 | 41.4 | 106 287 338 | 100.0 | 7.5 | NA | |
| 1940 | 1 570 122 189 | 111.5 | 668 817 347 | 114.7 | 42.6 | 107 874 126 | 101.5 | 6.9 | NA | |
| 1941 | 1 982 938 487 | 140.8 | 901 343 494 | 154.6 | 45.5 | 139 095 048 | 130.9 | 7.0 | NA | |
| 1942 | 2 451 007 601 | 174.0 | 1,162 672 224 | 199.4 | 47.4 | 148 297 514 | 139.5 | 6.1 | NA | |
| 1943 | 2 708 602 695 | 192.3 | 1,356 667 291 | 232.6 | 50.1 | 154 255 856 | 145.1 | 5.7 | NA | |
| 1944 | 2 731 519 123 | 194.0 | 1,396 261 179 | 239.4 | 51.1 | 159 063 596 | 149.7 | 5.8 | NA | |
| 1945 | 2 505 434 031 | 177.9 | 1,253 548 690 | 215.0 | 50.0 | 161 489 207 | 151.9 | 6.4 | NA | |
| 1946 | 2 308 907 302 | 164.0 | 1,025 551 566 | 175.9 | 44.4 | 200 924 139 | 189.0 | 8.7 | NA | |
| 1947 | 2 816 609 898 | 200.0 | 1,251 316 685* | 214.6 | 44.4 | 223 075 478 | 209.9 | 7.9 | 47 966 133 | 1.7 |
| 1948 | 3 187 072 575 | 226.3 | 1,495 651 364* | 256.5 | 46.9 | 226 127 705 | 212.8 | 7.1 | 55 106 998 | 1.7 |
| 1949 | 2 745 322 824 | 194.9 | 1,296 851 808* | 222.4 | 47.2 | 170 872 169 | 160.8 | 6.2 | 50 326 768 | 1.8 |
| 1950 | 3 011 601 808 | 213.8 | 1,395 404 209* | 239.3 | 46.3 | 152 197 201 | 143.2 | 5.1 | 58 912 235 | 2.0 |
| 1951 | 3 332 235 459 | 236.6 | 1,647 144 136* | 282.5 | 49.4 | 155 900 770 | 146.7 | 4.7 | 57 548 949 | 2.0 |
| 1952 | 3 284 882 834 | 233.2 | 1,619 988 627* | 277.8 | 49.3 | 150 369 123 | 141.5 | 4.6 | 55 573 642 | 2.3 |
| 1953 | 3 396 979 622 | 241.2 | 1,734 762 307* | 297.5 | 51.1 | 138 548 902 | 130.2 | 4.1 | 76 741 698 | 2.3 |
| 1954 | 2 824 357 948 | 200.6 | 1,402 265 179* | 240.5 | 49.6 | 111 815 919 | 105.2 | 4.0 | 72 839 101 | 2.5 |
| 1955 | 3 164 673 639 | 224.7 | 1,593 922 235* | 273.3 | 50.4 | 114 828 194 | 108.0 | 3.6 | 75 670 293 | 2.5 |
| 1956 | 3 350 788 988 | 237.9 | 1,651 939 372* | 283.3 | 49.3 | 112 270 893 | 105.6 | 3.4 | 82 624 346 | 2.4 |
| 1957 | 3 326 181 655 | 236.2 | 1,660 076 995* | 284.7 | 49.9 | 104 537 413 | 98.4 | 3.1 | 83 740 279 | 2.5 |

Source: Freight Commodity Statistics, Class 1 Railroads in the United States, Interstate Commerce Commission, Bureau of Transport Economics and Statistics.

* Does not include Freight Forwarder Revenue.

NA - Not available.

NEW HAVEN RAILROAD

I&S Docket No. 7131
 Witness: H. D. Hartmann

Sheet 2 of 2 Sheets

| Year | Total Freight Revenue | 1939=100 | Manufactures & Miscellaneous | 1939=100 | Percent to Total Frt. Revenue | Less than Carload | 1939=100 | Percent to Total Frt. Revenue | Freight Forwarder | Percent to Total Frt. Revenue |
|------|--------------------------|----------|---------------------------------|----------|-------------------------------------|----------------------|----------|-------------------------------------|----------------------|-------------------------------------|
| 1939 | \$49 985 461 | 100.0 | 22 585 989 | 100.0 | 45.2 | 9 451 799 | 100.0 | 18.9 | NA | |
| 1940 | 53 097 161 | 106.2 | 25 657 078 | 113.6 | 48.3 | 9 314 641 | 98.6 | 17.5 | NA | |
| 1941 | 70 641 584 | 141.3 | 36 181 867 | 160.2 | 51.2 | 12 287 354 | 130.0 | 17.4 | NA | |
| 1942 | 92 737 199 | 185.5 | 45 542 361 | 201.6 | 49.1 | 13 346 687 | 141.2 | 14.4 | NA | |
| 1943 | 98 452 534 | 197.0 | 51 442 893 | 227.8 | 52.3 | 12 956 014 | 137.1 | 13.2 | NA | |
| 1944 | 97 076 862 | 194.2 | 55 163 786 | 244.3 | 56.8 | 13 014 272 | 137.7 | 13.4 | NA | |
| 1945 | 87 873 041 | 175.8 | 48 485 505 | 214.7 | 55.2 | 12 574 890 | 133.0 | 14.3 | NA | |
| 1946 | 82 430 319 | 164.9 | 40 379 262 | 178.8 | 49.0 | 15 723 008 | 166.4 | 19.1 | NA | |
| 1947 | 90 739 792 | 181.5 | 43 044 156* | 190.6 | 47.4 | 16 557 160 | 175.2 | 18.2 | 1 980 779 | 2.2 |
| 1948 | 103 261 523 | 206.6 | 50 982 148* | 225.7 | 49.4 | 16 618 865 | 175.8 | 16.1 | 2 323 004 | 2.2 |
| 1949 | 85 245 362 | 170.5 | 42 749 958* | 189.3 | 50.1 | 11 773 192 | 124.6 | 13.8 | 2 041 328 | 2.4 |
| 1950 | 90 109 734 | 180.3 | 48 870 852* | 216.4 | 54.2 | 9 297 230 | 98.4 | 10.3 | 2 464 164 | 2.7 |
| 1951 | 95 097 898 | 190.3 | 56 560 033* | 250.4 | 59.5 | 9 084 899 | 96.1 | 9.6 | 2 752 845 | 2.9 |
| 1952 | 95 991 355 | 192.0 | 57 506 249* | 254.6 | 59.9 | 8 472 432 | 89.6 | 8.8 | 2 974 001 | 3.1 |
| 1953 | 97 852 270 | 195.8 | 61 062 649* | 270.4 | 62.4 | 7 960 181 | 84.2 | 8.1 | 3 161 200 | 3.2 |
| 1954 | 84 362 984 | 168.8 | 50 914 075* | 225.4 | 60.4 | 6 077 079 | 64.3 | 7.2 | 2 901 863 | 3.4 |
| 1955 | 91 315 728 | 182.1 | 55 925 170* | 247.6 | 61.2 | 7 146 272 | 75.6 | 7.8 | 3 510 342 | 3.8 |
| 1956 | 94 889 070 | 189.8 | 59 325 831* | 262.7 | 62.5 | 5 676 187 | 60.1 | 6.0 | 3 308 167 | 3.5 |
| 1957 | 94 941 832 | 189.9 | 59 385 282* | 262.9 | 62.5 | 5 132 312 | 54.3 | 5.4 | 3 303 644 | 3.5 |

Source: Freight Commodity Statistics, Class 1 Railroads in the United States,
 Interstate Commerce Commission, Bureau of Transport Economics and Statistics.

* Does not include Freight Forwarder Revenue.

NA - Not available.

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 14

I&S Docket No. 7131

Witness: H. D. Hartmann /

COMPARISON OF PERCENT OF REVENUE ON MANUFACTURED AND MISCELLANEOUS TO TOTAL REVENUES FOR THE EASTERN DISTRICT AND THE NEW HAVEN RAILROAD FOR THE YEARS 1939 TO 1957, INCLUSIVE.

| <u>Year</u> | <u>Eastern District</u> | <u>New Haven Railroad</u> |
|-------------|-------------------------|---------------------------|
| 1939 | 41.4 | 45.2 |
| 1940 | 42.6 | 48.3 |
| 1941 | 45.5 | 51.2 |
| 1942 | 47.4 | 49.1 |
| 1943 | 50.1 | 52.3 |
| 1944 | 51.1 | 56.8 |
| 1945 | 50.0 | 55.2 |
| 1946 | 44.4 | 49.0 |
| 1947 | 44.4 | 47.4 |
| 1948 | 46.9 | 49.4 |
| 1949 | 47.2 | 50.1 |
| 1950 | 46.3 | 54.2 |
| 1951 | 49.4 | 59.5 |
| 1952 | 49.3 | 59.9 |
| 1953 | 51.1 | 62.4 |
| 1954 | 49.6 | 60.4 |
| 1955 | 50.4 | 61.2 |
| 1956 | 49.3 | 62.5 |
| 1957 | 49.9 | 62.5 |

Source: HDH-12

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 15

I&S Docket No. 7131

Witness: H. D. Hartmann

COMPARISON OF PERCENT OF REVENUE ON LESS THAN CARLOAD
TO TOTAL REVENUE FOR THE EASTERN DISTRICT AND THE NEW
HAVEN RAILROAD FOR THE YEARS 1939 TO 1957, INCLUSIVE.

| <u>Year</u> | <u>Eastern District</u> | <u>New Haven Railroad</u> |
|-------------|-------------------------|-------------------------------|
| 1939 | 7.5 | 18.9 |
| 1940 | 6.9 | 17.5 |
| 1941 | 7.0 | 17.4 |
| 1942 | 6.1 | 14.4 |
| 1943 | 5.7 | 13.2 |
| 1944 | 5.8 | 13.4 |
| 1945 | 6.4 | 14.3 |
| 1946 | 8.7 | 19.1 |
| 1947 | 7.9 | 18.2 |
| 1948 | 7.1 | 16.1 |
| 1949 | 6.2 | 13.8 |
| 1950 | 5.1 | 10.3 |
| 1951 | 4.7 | 9.6 |
| 1952 | 4.6 | 8.8 |
| 1953 | 4.1 | 8.1 |
| 1954 | 4.0 | 7.2 |
| 1955 | 3.6 | 7.8 |
| 1956 | 3.4 | 6.0 |
| 1957 | 3.1 | 5.4 |

Source: HDH-12

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 16.

I&S Docket No. 7131

Witness: H. D. Hartmann

COMPARISON OF PERCENT OF REVENUE ON MANUFACTURED
AND MISCELLANEOUS AND LESS THAN CARLOAD TO TOTAL
REVENUE FOR THE EASTERN DISTRICT AND NEW HAVEN
RAILROAD FOR THE YEARS 1939 TO 1957, INCLUSIVE

| <u>Year</u> | <u>Eastern District</u> | <u>New Haven Railroad</u> |
|-------------|-------------------------|---------------------------|
| 1939 | 46.9 | 64.1 |
| 1940 | 49.5 | 65.8 |
| 1941 | 52.5 | 68.6 |
| 1942 | 53.5 | 63.5 |
| 1943 | 55.8 | 65.5 |
| 1944 | 56.9 | 70.2 |
| 1945 | 56.4 | 69.5 |
| 1946 | 53.1 | 68.1 |
| 1947 | 52.3 | 65.6 |
| 1948 | 54.0 | 65.5 |
| 1949 | 53.4 | 63.9 |
| 1950 | 51.4 | 64.5 |
| 1951 | 54.1 | 69.1 |
| 1952 | 53.9 | 68.7 |
| 1953 | 55.2 | 70.5 |
| 1954 | 53.6 | 67.6 |
| 1955 | 54.0 | 69.0 |
| 1956 | 52.7 | 68.5 |
| 1957 | 53.0 | 67.9 |

Source: Exhibit HDH-12 by adding the L.C.L. and
Manufactured and Miscellaneous percents.

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 17

I&S Docket No. 7131

Witness: H. D. Hartmann

COMPARISON OF REVENUE INDEX ON MANUFACTURES
AND MISCELLANEOUS FOR THE EASTERN DISTRICT
AND THE NEW HAVEN RAILROAD FOR THE YEARS
1939 TO 1957, USING 1939 AS INDEX 100

| <u>Year</u> | <u>Eastern District</u> | <u>New Haven Rail</u> |
|-------------|-------------------------|-----------------------|
| 1939 | 100.0 | 100.0 |
| 1940 | 114.7 | 113.6 |
| 1941 | 154.6 | 160.2 |
| 1942 | 199.4 | 201.6 |
| 1943 | 232.6 | 227.8 |
| 1944 | 239.4 | 244.3 |
| 1945 | 215.0 | 214.7 |
| 1946 | 175.9 | 178.8 |
| 1947 | 214.6 | 190.6 |
| 1948 | 256.5 | 225.7 |
| 1949 | 222.4 | 189.3 |
| 1950 | 239.3 | 216.4 |
| 1951 | 282.5 | 250.4 |
| 1952 | 277.8 | 254.6 |
| 1953 | 297.5 | 270.4 |
| 1954 | 240.5 | 225.4 |
| 1955 | 273.3 | 247.6 |
| 1956 | 283.3 | 262.7 |
| 1957 | 284.7 | 262.9 |

Source: Exhibit No. HDH-12

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 18

I&S Docket No. 7131
Witness: H. D. Hartmann

COMPARISON OF REVENUE INDEX FOR
ALL RAILROADS, EASTERN DISTRICT
AND NEW HAVEN RAILROAD FOR THE
YEARS 1947 TO 1957, 1939 = 100

| <u>Year</u> | <u>All Railroads</u> ^{1/} | <u>Railroads Eastern District</u> | <u>New Haven Railroad</u> |
|-------------|------------------------------------|---------------------------------------|-------------------------------|
| 1939 | 100.0 | 100.0 | 100.0 |
| 1947 | 216.7 | | |
| 1948 | 241.6 | 200.0 | 181.5 |
| 1949 | 214.6 | 226.3 | 206.6 |
| 1950 | 237.2 | 194.9 | 170.5 |
| 1951 | 260.2 | 213.8 | 180.3 |
| | | 236.6 | 190.3 |
| 1952 | 264.9 | | |
| 1953 | 267.2 | 233.2 | 192.0 |
| 1954 | 234.5 | 241.2 | 195.8 |
| 1955 | 253.5 | 200.6 | 168.8 |
| 1956 | 264.8 | 224.7 | 182.1 |
| | | 237.9 | 189.8 |
| 1957 | 263.7 | 236.2 | 189.9 |

^{1/} Transport Economics, January, 1959.

Source: Exhibit Nos. HDH-12 and HDH-8

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 19

I&S Docket No. 7131

Witness: H. D. Hartmann

COMPARISON OF REVENUE INDEX ON LESS THAN CARLOAD
FOR EASTERN DISTRICT AND THE NEW HAVEN RAILROAD
FOR THE YEARS 1939 TO 1957 USING 1939 AS INDEX 100

| <u>Year</u> | <u>Eastern District</u> | <u>New Haven Railroad</u> |
|-------------|-------------------------|---------------------------|
| 1939 | 100.0 | 100.0 |
| 1940 | 101.5 | 98.6 |
| 1941 | 130.9 | 130.0 |
| 1942 | 139.5 | 141.2 |
| 1943 | 145.1 | 137.1 |
| 1944 | 149.7 | 137.7 |
| 1945 | 151.9 | 133.0 |
| 1946 | 189.0 | 166.4 |
| 1947 | 209.9 | 175.2 |
| 1948 | 212.8 | 175.8 |
| 1949 | 160.8 | 124.6 |
| 1950 | 143.2 | 98.4 |
| 1951 | 146.7 | 96.1 |
| 1952 | 141.5 | 89.6 |
| 1953 | 130.2 | 84.2 |
| 1954 | 105.2 | 64.3 |
| 1955 | 108.0 | 75.6 |
| 1956 | 105.6 | 60.1 |
| 1957 | 98.4 | 54.3 |

Source: Exhibit No. HDH-12

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENTS' EXHIBIT 20

U.S. Docket No. 7131

Witness: H. D. Hartmann

STATEMENT SHOWING ACTUAL REVENUE PER
TON AND INDEX FOR MANUFACTURES AND
MISCELLANEOUS FOR THE RAILROADS IN
THE UNITED STATES AND THE NEW HAVEN
RAILROAD FOR THE YEARS 1939 TO 1957,
INCLUSIVE, USING 1939 AS INDEX 100.

| Year | <u>United States</u> | | <u>New Haven Railroad</u> | |
|------|----------------------------|--------------|----------------------------|--------------|
| | <u>Revenue Per Ton</u> | <u>Index</u> | <u>Revenue Per Ton</u> | <u>Index</u> |
| 1939 | 5.41 | 100.0 | | |
| 1940 | 5.36 | 99.1 | 2.59 | 100.0 |
| 1941 | 5.68 | 105.0 | 2.60 | 100.4 |
| 1942 | 7.51 | 138.8 | 2.71 | 104.6 |
| 1943 | 8.38 | 154.9 | 2.75 | 106.2 |
| | | | 2.77 | 106.9 |
| 1944 | 8.62 | 159.3 | | |
| 1945 | 8.36 | 154.5 | 2.85 | 110.0 |
| 1946 | 6.93 | 128.1 | 2.92 | 112.7 |
| 1947 | 7.60 | 140.4 | 2.89 | 111.6 |
| 1948 | 9.21 | 170.2 | 3.29 | 127.0 |
| | | | 4.03 | 155.6 |
| 1949 | 9.73 | 179.8 | | |
| 1950 | 9.77 | 184.2 | 4.21 | 162.5 |
| 1951 | 10.33 | 190.9 | 4.04 | 156.6 |
| 1952 | 11.09 | 204.9 | 4.16 | 160.6 |
| 1953 | 11.45 | 211.6 | 4.42 | 170.7 |
| | | | 4.48 | 173.0 |
| 1954 | 10.92 | 201.8 | | |
| 1955 | 10.54 | 194.8 | 4.30 | 166.0 |
| 1956 | 10.68 | 197.4 | 4.26 | 164.5 |
| 1957 | 11.52 | 212.9 | 4.35 | 168.0 |
| | | | 4.67 | 180.3 |

Source for United States: Interstate Commerce Commission
Bureau of Economics and Statistics
Annual Report.

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 21

I&S Docket No. 7131

Witness: H. D. Hartmann

Sheet one of 3 pages

HIGHWAY WEIGHT AND SIZE LIMIT

Maximum Gross Weight Tractor - Semi-Trailer (5 Axles)

| | <u>July 1. 1958</u> | <u>Jan. 1 1950</u> | <u>Jan. 1 1946</u> | <u>June 1 1934</u> |
|---------------|-------------------------|------------------------|------------------------|------------------------|
| Connecticut | 60,000 | 50,000 | 40,000 | 40,000 |
| Delaware | 60,000 | 60,000 | 40,000 | 40,000 |
| Illinois | 68,000 | 59,000 | 59,000 | 40,000 |
| Indiana | 73,000 | 72,000 | 52,500 | 46,000 |
| Maine | 60,000 | 50,000 | 40,000 | 36,000 |
| Maryland | 65,000 | 67,500 | 67,500 | 40,000 |
| Massachusetts | 60,000 | 50,000 | 40,000 | 40,000 |
| Michigan | 66,000 | 66,000 | 60,000 | 70,000 |
| Missouri | 64,650 | 56,000 | 38,000 | 38,000 |
| New Hampshire | 66,400 | 50,000 | 40,000 | 35,000 |
| New Jersey | 60,000 | 60,000 | 60,000 | 60,000 |
| New York | 65,000 | 63,750 | 63,750 | 63,750 |
| Ohio | 73,000 | 70,000 | 66,000 | 42,000 |
| Pennsylvania | 60,000 | 45,000 | 45,000 | 39,000 |
| Rhode Island | 60,000 | 60,000 | 46,000 | 40,000 |
| Vermont | 60,000 | 50,000 | 40,000 | 20,000 |
| Virginia | 56,800 | 50,000 | 40,000 | 35,000 |
| West Virginia | 63,840 | 72,000 | 60,000 | 48,000 |
| Wisconsin | 68,000 | 66,000 | 66,000 | 43,000 |

[fol. 799]

I&S Docket No. 7131 174
Witness: H. D. Hartmann

Sheet two of 3 pages

Length in Feet of Tractor - Semi-Trailer

| | <u>July 1</u> <u>1958</u> | <u>Jan. 1</u> <u>1950</u> | <u>Jan. 1</u> <u>1946</u> | <u>June 1</u> <u>1934</u> |
|---------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Connecticut | 45 | 45 | 40 | 40 |
| Delaware | 50 | 50 | 60 | 60 |
| Illinois | 50 | 45 | 45 | 40 |
| Indiana | 50 | 50 | 40 | 40 |
| Maine | 50 | 45 | 40 | 62 |
| Maryland | 55 | 55 | 55 | NR |
| Massachusetts | 45 | 45 | 40 | 40 |
| Michigan | 55 | 50 | 50 | 50 |
| Missouri | 50 | 45 | 45 | 40 |
| New Hampshire | 45 | 45 | 45 | 45 |
| New Jersey | 45 | 45 | 45 | 85 |
| New York | 50 | 50 | 50 | 50 |
| Ohio | 50 | 45 | 45 | 40 |
| Pennsylvania | 50 | 45 | 45 | 70 |
| Rhode Island | 50 | 50 | 45 | 85 |
| Vermont | 50 | 50 | 50 | 50 |
| Virginia | 50 | 45 | 45 | 45 |
| West Virginia | 50 | 45 | 45 | 45 |
| Wisconsin | 50 | 45 | 45 | 60 |

NR No Regulation

Sheet three of 3 pages.

Height of Vehicles Feet and Inches

| | <u>July 1</u> <u>1958</u> | <u>Jan. 1</u> <u>1950</u> | <u>Jan. 1</u> <u>1946</u> | <u>June 1</u> <u>1934</u> |
|---------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Connecticut | 12-6 | 12-6 | 12-6 | NR |
| Delaware | 12-6 | 12-6 | 12-6 | 12-2 |
| Illinois | 13-6 | 13-6 | 12-6 | NR |
| Indiana | 13-6 | 12-6 | 12 | 12 |
| Maine | 12-6 | 12-6 | 12-6 | 12-6 |
| Maryland | 12-6 | NR | NR | NR |
| Massachusetts | NR | NR | NR | NR |
| Michigan | 13-6 | 12-6 | 12-6 | 12-6 |
| Missouri | 12-6 | 12-6 | 12-6 | 12-6 |
| New Hampshire | 13-6 | 13-6 | NR | NR |
| New Jersey | 13-6 | 13-6 | 12-6 | 12-6 |
| New York | 13-0 | 13-0 | 13-0 | 13-0 |
| Ohio | 13-6 | 12-6 | 12-6 | 12-6 |
| Pennsylvania | 12-6 | 12-6 | 12-6 | 14-6 |
| Rhode Island | 12-6 | 12-6 | 12-6 | 12-6 |
| Vermont | 12-6 | 12-6 | 12 | 12 |
| Virginia | 12-6 | 12-6 | 12-6 | 12-6 |
| West Virginia | 12-6 | 12-6 | 12-6 | 12-6 |
| Wisconsin | 12-6 | 12-6 | 12-6 | 12-6 |

NR No Regulation

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENTS' EXHIBIT 22
I&S Docket 7131Witness H.E. Hartmann

Sheet 1 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2TO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|---|---------------------------|---|-------------------|-----------------------------------|-----------------------------|--------|--------|
| | | Rate | Minimum Weight | Tariff MF-ICC No. A-159, Item: | Tariff ICC F 4501 20,000 | 30,000 | 40,000 |
| 1. Almanacs, Advertising Calendars, etc. | Boston, Mass. | 198 | 23,000 | 5840 | 213 | 154 | - |
| 2. " " " | Hartford, Conn. | 198 | 23,000 | " | 207 | 150 | - |
| 3. " " " | Springfield, Mass. | 198 | 23,000 | " | 204 | 147 | - |
| 4. Asbestos Articles | Bridgeport, Conn. | 247 | 10,000 | 6450 | 207 | 150 | - |
| 5. Battery Insulating Partitions | Providence, R.I. | 174 | 28,000 | 7400 | 216 | 156 | 120 |
| 6. Belts or Belting | Boston, Mass. | 189 | 30,000 | 7430 | 213 | 154 | 118 |
| 7. Automobile Parts | Hartford, Conn. | 197 | 20,000 | 8190 | 207 | 150 | - |
| 8. " " | Springfield, Mass. | 197 | 20,000 | " | 204 | 147 | - |
| 9. Buffing or Polishing Compounds | Boston, Mass. | 143 | 30,000 | 8440 | 213 | 154 | 118 |
| 10. Builders' Hardware | New Britain, Conn. | 197 | 20,000 | 8510 | 207 | 150 | - |
| 11. Casters, furniture, etc. | Bridgeport, Conn. | 134 | 30,000 | 8940 | 207 | 150 | 115 |
| 12. Cellulose Film | Chelsea, Mass. | 165 | 32,000 | 8970 | 213 | 154 | 118 |
| 13. " " | Boston, Mass. (Rep.) | 144 | 23,000 | 8985 | 213 | - | - |
| | | 133 | 30,000 | | - | 154 | 118 |
| 14. " " | Hartford, Conn. (Rep.) | 141 | 23,000 | " | 207 | - | - |
| | | 129 | 30,000 | | - | 150 | 115 |
| 15. " " | New Haven, Conn. (Rep.) | 141 | 23,000 | " | 207 | - | - |
| | | 129 | 30,000 | | - | 150 | 115 |
| 16. " " | Providence, R.I. (Rep.) | 147 | 23,000 | " | 216 | - | - |
| | | 135 | 30,000 | | - | 156 | 120 |
| 17. " " | Springfield, Mass. (Rep.) | 139 | 23,000 | " | 204 | - | - |
| | | 126 | 30,000 | | - | 147 | 113 |

I&S Docket 7131

Witness H.D. Hartmann

Sheet 2 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

TO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|--|-------------------------|---|-------------------|-----------------------------------|-------------------|--------|--------|
| | | Rate | Minimum Weight | Tariff MF-ICC No. A-159, Item: | Tariff ICC F 4501 | | |
| | | | | | 20,000 | 30,000 | 40,000 |
| 18. Cellulose Film | Worcester, Mass. (Rep.) | 143 | 23,000 | 8985 | 210 | - | - |
| | | 130 | 30,000 | | - | 151 | 117 |
| 19. Cement and Latex | Boston, Mass. | 146 | 30,000 | 9060 | 213 | 154 | 118 |
| 20. Chemicals | Boston, Mass. | 137 | 25,000 | 9600 | 213 | 154 | - |
| 21. Cleaning, Scouring or Washing Compounds | Boston, Mass. | 129 | 30,000 | 9980 | 213 | 154 | 118 |
| 22. " " " | Holyoke, Mass. | 123 | 34,000 | 10010 | 204 | 147 | 113 |
| 23. Clothing, waterproofed | Boston, Mass. | 264 | 16,000 | 10330 | 213 | 154 | - |
| 24. " " " | Providence, R.I. | 264 | 16,000 | " | 216 | 156 | - |
| 25. Commodities, in mixed shipments: | | | | | | | |
| Belting, rubber | Boston, Mass. | 200 | 30,000 | 10690 | 213 | 154 | 118 |
| Heels, Soles, etc. | Boston, Mass. | 167 | 30,000 | " | 213 | 154 | 118 |
| Hose, rubber, in bales | Boston, Mass. | 148 | 30,000 | " | 213 | 154 | 118 |
| Hose, N.O.I., in cartons | Boston, Mass. | 200 | 30,000 | " | 213 | 154 | 118 |
| Matting, rubber | Boston, Mass. | 130 | 30,000 | " | 213 | 154 | 118 |
| Packing, rubber | Boston, Mass. | 167 | 30,000 | " | 213 | 154 | 118 |
| Tape, insulating | Boston, Mass. | 160 | 30,000 | " | 213 | 154 | 118 |
| 26. Commodities, in mixed shipments, (Rep.) | | | | | | | |
| Icicles, Foil, lead, etc.) | | | | | | | |
| Plastics, synthetic) | | | | | | | |
| Snow, artificial) | Stamford, Conn. | (365 | 12,000 | 10700 | 210 | 151 | - |
| Hooks, N.O.I., steel) | | (320 | 15,000 | | | | |
| Tinsel) | | | | | | | |
| Holiday Decorations, etc.) | | | | | | | |

I&S Docket 7131

Witness H.D. Hartmann

Sheet 3 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

TO: CHICAGO, ILL.

| <u>Commodity</u> | <u>From</u> | <u>Eastern Central Motor Carriers Association</u> | | | <u>NYNH&H RR</u> | | |
|---|--------------------|---|---------------|---|-------------------------------------|---------------|---------------|
| | | <u>Rate</u> | <u>Weight</u> | <u>Tariff MF-ICC No. A-159, Item:</u> | <u>Tariff ICC F 4501 20,000</u> | <u>30,000</u> | <u>40,000</u> |
| 27. Commodities, in mixed shipments: | | | | | | | |
| Band, Bar, Plate Steel) | | | | | | | |
| Hardware, N.O.I.) | | (170 | 20,000 | | | | |
| Machine Parts) | Fitchburg, Mass. | (160 | 25,000 | 10830 | 207 | 150 | 115 |
| Knives, Machine) | | (150 | 30,000 | | | | |
| Saw Blades) | | | | | | | |
| Tools, hand) | | | | | | | |
| 28. Conduits, Pipe, etc., viz.: | | | | | | | |
| Pipe Fittings, Iron or Steel | Boston, Mass. | 135 | 30,000 | 10890 | 213 | 154 | 118 |
| Valves, brass, bronze, etc. | Boston, Mass. | 179 | 30,000 | " | 213 | 154 | 118 |
| Valves, Iron or Steel, etc. | Boston, Mass. | 135 | 30,000 | " | 213 | 154 | 118 |
| 29. Curtain Poles or Rods | New Haven, Conn. | 166 | 20,000 | 11080 | 207 | 150 | - |
| 30. " " " | Wallingford, Conn. | 166 | 23,000 | " | 207 | 150 | - |
| 31. Drugs, Medicines, Toilet Preparations | Boston, Mass. | 137 | 24,000 | 11230 | 213 | 154 | - |
| 32. " " " " | Bridgeport, Conn. | a-123 | 30,000 | " | 207 | 150 | 115 |
| | | 137 | 24,000 | " | 207 | 150 | - |
| 33. " " " " | Springfield, Mass. | 137 | 24,000 | " | 204 | - | - |
| | | 129 | 30,000 | " | - | 147 | 113 |
| 34. " " " " | Stamford, Conn. | 129 | 24,000 | " | 210 | - | - |
| | | a-123 | 30,000 | " | - | 151 | 117 |
| 35. Electrical Appliances | Hartford, Conn. | 166 | 23,000 | 11510 | 207 | - | - |
| | | 156 | 30,000 | | - | 150 | 115 |
| 36. " " | Springfield, Mass. | 166 | 23,000 | " | 204 | 147 | - |
| 37. Electric Motors or Parts | Hartford, Conn. | 163 | 20,000 | 11550 | 207 | 150 | - |

I&S Docket 7131

Witness H.D. Hartmann

Sheet 4 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

TO: CHICAGO, ILL.

| <u>Commodity</u> | <u>From</u> | <u>Eastern Central Motor Carriers Association</u> | | | <u>NYNH&H RR</u> | | |
|--|---------------------------------|---|---------------------------|---|-------------------------------------|---------------|---------------|
| | | <u>Rate</u> | <u>Minimum Weight</u> | <u>Tariff MF-ICC No. A-159, Item:</u> | <u>Tariff ICC F 4501 20,000</u> | <u>30,000</u> | <u>40,000</u> |
| 38. Electric Appliances | New Bedford, Mass. | 168 | 23,000 | 11720 | 216 | - | - |
| | | 158 | 30,000 | | - | 156 | 120 |
| 39. Electric Wiring Devices | Providence, R.I. | 168 | 23,000 | 11960 | 216 | - | - |
| | | 158 | 30,000 | | - | 156 | 120 |
| 40. " " " | Worcester, Mass. | 157 | 30,000 | " | 210 | 151 | 117 |
| 41. Floor Covering | South Braintree, Mass. | 122 | 30,000 | 12360 | 213 | 154 | 118 |
| 42. Glue, N.O.I. | Stamford, Conn. | 141 | 30,000 | 13390 | 210 | 151 | 117 |
| 43. " " " | Wallingford, Conn. | 141 | 30,000 | " | 207 | 150 | 115 |
| 44. " " " | Meriden and New Haven, Conn. | 141 | 30,000 | " | 207 | 150 | 115 |
| 45. Hardware, viz.: | | | | | | | |
| Chains, sprocket, pitch less than 2.5 inches | Hartford, Conn. | 201 | 30,000 | 13640 | 207 | 150 | 115 |
| Chains, sprocket, pitch not less than 2.5 inches | Hartford, Conn. | 156 | 30,000 | " | 207 | 150 | 115 |
| Wheels, sprocket | Hartford, Conn. | 158 | 30,000 | " | 207 | 150 | 115 |
| 46. Ink) Typewriter Ribbons) Carbon Paper) etc.) | Boston, Mass. | 158 | 23,000 | 13870 | 213 | 154 | - |
| 47. Commodities in mixed shipments: | | | | | | | |
| Insecticides) Cleaning Compound) Illuminating or) burning oil) Plastic Materials) | Bridgeport, Conn. | 130 | 30,000 | 13900 | 207 | 150 | 115 |

I&S Docket 7131

Witness H.D. Hartmann

Sheet 5 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

TO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|---|---------------------------------|---|-------------------|-----------------------------------|-----------------------------|--------|--------|
| | | Rate | Minimum Weight | Tariff MF-ICC No. A-159, Item: | Tariff ICC F 4501 20,000 | 30,000 | 40,000 |
| 48. Leather, N.O.I. | Boston, Mass. | 189 | 24,000 | 14250 | 213 | 154 | - |
| 49. Machinery or Machinery Parts (Air Cleaners, Coolers) | Springfield, Mass. | 163 | 30,000 | 14560 | 204 | 147 | 113 |
| 50. Mica | Boston, Mass. | 277 | 18,000 | 15380 | 213 | 154 | - |
| 51. Mica Splittings | Boston, Mass. | 247 | 18,000 | 15390 | 213 | 154 | - |
| 52. Office Supplies | Boston, Mass. | 121 | 30,000 | 15560 | 213 | 154 | 118 |
| 53. Paint, Paint Material or Putty | Stamford, Conn. | 151 | 25,000 | 15830 | 210 | 151 | 117 |
| 54. " " " | Boston, Mass. | 145 | 25,000 | 15940 | 213 | - | - |
| | | 139 | 32,000 | | - | 154 | - |
| | | 132 | 36,000 | | - | - | 118 |
| 55. Plastic Bowls | Cambridge, Mass. | 165 | 30,000 | 17570 | 213 | 154 | 118 |
| 56. Plastic Materials | Bridgeport, Conn. | 129 | 30,000 | 17600 | 207 | 150 | 115 |
| 57. " " | Naugatuck, Conn. | 129 | 30,000 | " | 204 | 147 | 113 |
| 58. " " | Springfield, Mass. | 144 | 23,000 | " | 204 | - | - |
| | | 133 | 30,000 | " | - | 147 | 113 |
| 59. " " | Naugatuck, Conn. | 144 | 23,000 | 17720 | 204 | - | - |
| | | 129 | 30,000 | | - | 147 | 113 |
| 60. " " | Wallingford, Conn. | 137 | 23,000 | 17800 | 207 | - | - |
| | | 129 | 30,000 | | - | 150 | 115 |
| 61. " " | Waterbury, Conn. | 144 | 23,000 | " | 204 | - | - |
| | | 133 | 30,000 | | - | 147 | 113 |
| 62. " " | Meriden and New Haven, Conn. | 137 | 23,000 | " | 207 | - | - |
| | | 129 | 30,000 | | - | 150 | 115 |
| 63. " " | Clinton, Mass. | 145 | 23,000 | 17830 | 207 | - | - |
| | | 139 | 30,000 | | - | 150 | 115 |

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Witness H.D. Hartmann

Sheet 6 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

TO: CHICAGO, ILL.

| | | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|--|--------------------|---|-------------------|-----------------------------------|-----------------------------|--------|--------|
| Commodity | From | Rate | Minimum Weight | Tariff MF-ICC No. A-159, Item: | Tariff ICC F 4501 20,000 | 30,000 | 40,000 |
| 64. Plumbers' Goods | Waterbury, Conn. | 181 | 23,000 | 18040 | 204 | 147 | - |
| 65. Rubber Articles | Bristol, R.I. | 265 | 10,000 | 18570 | 216 | 156 | - |
| 66. " " | New Haven, Conn. | 265 | 10,000 | " | 207 | 150 | - |
| 67. " " | Stamford, Conn. | 265 | 10,000 | " | 210 | 151 | - |
| 68. " " | Boston, Mass. | 225 | 10,000 | " | 213 | 154 | - |
| 69. " " | Bridgeport, Conn. | 225 | 10,000 | " | 207 | 150 | - |
| 70. " " | Providence, R.I. | 225 | 10,000 | " | 216 | 156 | - |
| 71. Sole Leather | Boston, Mass. | 158 | 30,000 | 19290 | 213 | 154 | - |
| 72. Tools | Boston, Mass. | 168 | 23,000 | 20210 | 213 | 154 | - |
| 73. " | Worcester, Mass. | 168 | 23,000 | " | 210 | 151 | - |
| 74. " | Clinton, Mass. | 168 | 25,000 | " | 207 | 150 | - |
| 75. " | Springfield, Mass. | 166 | 23,000 | " | 204 | 147 | - |
| 76. " | New Britain, Conn. | 166 | 25,000 | " | 207 | 150 | - |
| 77. " | New Haven, Conn. | 166 | 25,000 | " | 207 | 150 | - |
| 78. Typewriters, Computing Machines and Parts | Hartford, Conn. | 233 | 18,000 | 20360 | 207 | 150 | - |
| 79. " " " | Springfield, Mass. | 233 | 18,000 | " | 204 | 147 | - |
| 80. Valves, brass, bronze, etc. | Bridgeport, Conn. | 212 | 23,000 | 20440 | 207 | - | - |
| | | 179 | 30,000 | | - | 150 | 115 |
| 81. Valves, iron or steel | Bridgeport, Conn. | 165 | 23,000 | 20450 | 207 | - | - |
| 82. Valves, iron or steel | Bridgeport, Conn. | 135 | 30,000 | 20460 | - | 150 | 115 |
| 83. Vehicle Parts | Meriden, Conn. | 183 | 23,000 | 20600 | 207 | 150 | - |
| 84. " " | Torrington, Conn. | 212 | 23,000 | " | 204 | 147 | - |
| 85. " " | Worcester, Mass. | 228 | 23,000 | " | 210 | 151 | - |
| 86. " " | Westfield, Mass. | 212 | 23,000 | " | 204 | 147 | - |

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Witness H.D.Hartmann
Sheet 7 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

TO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|-------------------------------|------------------|---|-------------------|-----------------------------------|-------------------|--------|--------|
| | | Rate | Minimum Weight | Tariff MF-ICC No. A-159, Item: | Tariff ICC F 4501 | | |
| | | | | | 20,000 | 30,000 | 40,000 |
| 87. Wire Cloth, iron or steel | Clinton, Mass. | 161 | 30,000 | 20850 | 207 | 150 | 115 |
| 88. " " " " | Worcester, Mass. | 161 | 30,000 | 20850 | 210 | 151 | 117 |

a - Declared value to be not exceeding 50¢ per pound.

(Rep.)-Representative.

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Witness H.D. Hartmann

Sheet 8 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

METALS (Other than I or S)TO: CHICAGO, ILL.

| <u>Commodity</u> | <u>From</u> | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|--|--|---|--------------------------------------|---|-------------------------------------|--------------------------|--------------------------|
| | | <u>Rate</u> | <u>Weight</u> | <u>Tariff MF-ICC No. A-163, Item:</u> | <u>Tariff ICC F 4501 20,000</u> | <u>30,000</u> | <u>40,000</u> |
| 1. Brass, Bronze, Copper, Cupro-) Nickel and Nickel Silver) Articles, Viz.:) Cable, Electric) Brass, Bronze or Copper) Copper Steel Armoured, Lead) covered or Armour Lead) covered.) Wire, covered, insulated or) Plain) | (Bristol, R.I. (Pawtucket, R.I. (Providence, R.I. (Worcester, Mass. | 130 130 130 125 | 32,000 32,000 32,000 30,000 | 7725 " " " | 216 216 216 210 | 156 156 156 151 | 120 120 120 117 |
| 2. Ingots, Cupro-Nickel or Nickel) Silver) Shot, Brass, Bronze or Copper,) Cupro-Nickel or Nickel) Silver) | (Hartford, Conn. (Springfield, Mass. | 122 122 | 30,000 30,000 | 7850 " | 207 204 | 150 147 | 115 113 |

Witness H. D. Hartmann
Sheet 9 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL.
FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD WITH RAIL BOX CAR RATES
FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BRASS, BRONZE OR COPPER ARTICLES, VIZ.:

ANODES

ASHES, BOTTOMS, BORINGS, DROSS, GRINDINGS,

RESIDUES SCALE, SKIMMINGS, SLIMES,

SWEETINGS, TURNINGS, WASHINGS, OR WASTE

BARs OR BILLETS

CAKES, INGOTS, PIGS OR SLABS

CATHODES

CHIPS

SCRAP

TO: CHICAGO, ILL.

| From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|-----------------------------|---|-----------------------|------------------|-------------------|--------|--------|
| | Rate | Minimum Tariff MF-ICC | | Tariff ICC F 4501 | | |
| | | Weight | No. A-163, Item: | 20,000 | 30,000 | 40,000 |
| Ansonia, Conn. | 126 | 32,000 | 7300 | 204 | 147 | 113 |
| Armory, Mass. | 126 | 32,000 | 7300 | 204 | 147 | 113 |
| Blackstone, Mass. | 131 | 32,000 | 7300 | 210 | 151 | 117 |
| Boston, Mass. | 134 | 32,000 | 7300 | 213 | 154 | 118 |
| Bridgeport, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| Bristol, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Cabot, Mass. | 134 | 32,000 | 7300 | 213 | 154 | 118 |
| Clinton, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| Clinton, Mass. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| East Providence Wharf, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Fall River, Mass. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Fitchburg, Mass. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| Fox Point, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Georgetown, Conn. | 131 | 32,000 | 7300 | 210 | 151 | 117 |
| Groton, Conn. | 134 | 32,000 | 7300 | 213 | 154 | 118 |
| Harbor Junction Wharf, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Hartford, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| Holyoke, Mass. | 126 | 32,000 | 7300 | 204 | 147 | 113 |
| Meriden, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| Naugatuck, Conn. | 126 | 32,000 | 7300 | 204 | 147 | 113 |
| New Bedford, Mass. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| New Britain, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| New Haven, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 115 |
| New London, Conn. | 134 | 32,000 | 7300 | 213 | 154 | 118 |
| Northampton, Mass. | 126 | 32,000 | 7300 | 204 | 147 | 113 |
| North Plymouth, Mass. | 134 | 32,000 | 7300 | 213 | 154 | 118 |
| Pawtucket, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Pittsfield, Mass. | 120 | 32,000 | 7300 | 198 | 143 | 110 |
| Providence, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| Saylesville, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 120 |
| South Braintree, Mass. | 134 | 32,000 | 7300 | 213 | 154 | 118 |

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL.
FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD WITH RAIL BOX CAR RATES
FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BRASS, BRONZE OR COPPER ARTICLES, VIZ.:

ANODES
ASHES, BOTTOMS, BORINGS, DROSS, GRINDINGS,
RESIDUES SCALE, SKIMMINGS, SLIMES,
SWEEPINGS, TURNINGS, WASHINGS, OR WASTE
BARS OR BILLETS
CAKES, INGOTS, PIGS OR SLABS
CATHODES
CHIPS
SCRAP

TO: CHICAGO, ILL.

| From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|------------------------|---|-------------------|-----------------------------------|-----------------------------|--------|--------|
| | Rate | Minimum Weight | Tariff MF-ICC No. A-163, Item: | Tariff ICC F 4501 20,000 | 30,000 | 40,000 |
| South Norwalk, Conn. | 131 | 32,000 | 7300 | 210 | 151 | 111 |
| South Providence, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 112 |
| Springfield, Mass. | 126 | 32,000 | 7300 | 204 | 147 | 111 |
| Stamford, Conn. | 131 | 32,000 | 7300 | 210 | 151 | 111 |
| Torrington, Conn. | 126 | 32,000 | 7300 | 204 | 147 | 111 |
| Wallingford, Conn. | 128 | 32,000 | 7300 | 207 | 150 | 111 |
| Walpole, Mass. | 134 | 32,000 | 7300 | 213 | 154 | 112 |
| Waterbury, Conn. | 126 | 32,000 | 7300 | 204 | 147 | 111 |
| Watuppa, Mass. | 137 | 32,000 | 7300 | 216 | 156 | 112 |
| Webster, Mass. | 131 | 32,000 | 7300 | 210 | 151 | 111 |
| Westfield, Mass. | 126 | 32,000 | 7300 | 204 | 147 | 111 |
| Willimantic, Conn. | 131 | 32,000 | 7300 | 210 | 151 | 111 |
| Woonsocket, R.I. | 137 | 32,000 | 7300 | 216 | 156 | 112 |
| Worcester, Mass. | 131 | 32,000 | 7300 | 210 | 151 | 111 |

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Witness H. F. Hartmann
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STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL.
FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD WITH RAIL BOX CAR RATES
FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BRASS, BRONZE, COPPER, CUPRO-NICKEL
OR NICKEL SILVER ARTICLES

TO: CHICAGO, ILL.

| From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|--------------------------------|---|--------|-----------------------------------|-------------------|--------|--------|
| | Minimum Weight | | Tariff MF-ICC No. A-163, Item: | Tariff ICC F 4501 | | |
| | 23,000 | 30,000 | | 20,000 | 30,000 | 40,000 |
| Ansonia, Conn. | 138 | 128 | 7400 | | | |
| Armory, Mass. | 138 | 128 | 7400 | 204 | 147 | 113 |
| Blackstone, Mass. | 143 | 133 | 7400 | 204 | 147 | 113 |
| Boston, Mass. | 145 | 136 | 7400 | 210 | 151 | 117 |
| Bridgeport, Conn. | 140 | 130 | 7400 | 213 | 154 | 118 |
| Bristol, R.I. | 147 | 138 | 7400 | 207 | 150 | 115 |
| Cabot, Mass. | 145 | 136 | 7400 | 216 | 156 | 120 |
| Clinton, Conn. | 140 | 130 | 7400 | 213 | 154 | 118 |
| Clinton, Mass. | 140 | 130 | 7400 | 207 | 150 | 115 |
| East Providence Wharf, R.I. | 147 | 138 | 7400 | 207 | 150 | 115 |
| Fall River, Mass. | 147 | 138 | 7400 | 216 | 156 | 120 |
| Pitchburg, Mass. | 140 | 130 | 7400 | 216 | 156 | 120 |
| Fox Point, R.I. | 147 | 138 | 7400 | 207 | 150 | 115 |
| Georgetown, Conn. | 143 | 133 | 7400 | 216 | 156 | 120 |
| Groton, Conn. | 145 | 136 | 7400 | 210 | 151 | 117 |
| Harbor Junction Wharf, R.I. | 147 | 138 | 7400 | 213 | 154 | 118 |
| Hartford, Conn. | 140 | 130 | 7400 | 216 | 156 | 120 |
| Holyoke, Mass. | 138 | 128 | 7400 | 207 | 150 | 115 |
| Meriden, Conn. | 140 | 130 | 7400 | 204 | 147 | 113 |
| Naugatuck, Conn. | 138 | 128 | 7400 | 207 | 150 | 115 |
| New Bedford, Mass. | 147 | 138 | 7400 | 204 | 147 | 113 |
| New Britain, Conn. | 140 | 130 | 7400 | 216 | 156 | 120 |
| New Haven, Conn. | 140 | 130 | 7400 | 207 | 150 | 115 |
| New London, Conn. | 145 | 136 | 7400 | 207 | 150 | 115 |
| Northampton, Mass. | 138 | 128 | 7400 | 213 | 154 | 118 |
| North Plymouth, Mass. | 145 | 136 | 7400 | 204 | 147 | 113 |
| Eastucket, R.I. | 147 | 138 | 7400 | 213 | 154 | 118 |
| Pittsfield, Mass. | 133 | 123 | 7400 | 216 | 156 | 120 |
| Providence, R.I. | 147 | 138 | 7400 | 198 | 143 | 110 |
| Saylesville, R.I. | 147 | 138 | 7400 | 216 | 156 | 120 |
| South Braintree, Mass. | 145 | 136 | 7400 | 216 | 156 | 120 |
| South Norwalk, Conn. | 143 | 133 | 7400 | 213 | 154 | 118 |
| South Providence, R.I. | 147 | 138 | 7400 | 210 | 151 | 117 |
| Springfield, Mass. | 138 | 128 | 7400 | 216 | 156 | 120 |
| Stamford, Conn. | 143 | 133 | 7400 | 204 | 147 | 113 |
| Torrington, Conn. | 138 | 128 | 7400 | 210 | 151 | 117 |
| | | | | 204 | 147 | 113 |

**STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL.
FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD WITH RAIL BOX CAR RATES
FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2**

**BRASS, BRONZE, COPPER, CUPRO-NICKEL
OR NICKEL SILVER ARTICLES**

TO CHICAGO, ILL.

| From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|--------------------|---|---------------|------------------|-------------------|--------|--------|
| | Minimum Weight | Tariff MF-ICC | No. A-163, Item: | Tariff ICC F 4501 | | |
| | 23,000 | 30,000 | | 20,000 | 30,000 | 40,000 |
| Wallingford, Conn. | 140 | 130 | 7400 | 207 | 150 | 117 |
| Walpole, Mass. | 145 | 136 | 7400 | 213 | 154 | 118 |
| Waterbury, Conn. | 138 | 128 | 7400 | 204 | 147 | 111 |
| Watuppa, Mass. | 147 | 138 | 7400 | 216 | 156 | 120 |
| Webster, Mass. | 143 | 133 | 7400 | 210 | 151 | 117 |
| Westfield, Mass. | 138 | 128 | 7400 | 204 | 147 | 111 |
| Willimantic, Conn. | 143 | 133 | 7400 | 210 | 151 | 117 |
| Woonsocket, R.I. | 147 | 138 | 7400 | 216 | 156 | 120 |
| Worcester, Mass. | 143 | 133 | 7400 | 210 | 151 | 117 |

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STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BOOKS, MAGAZINES, PAPER, PAPER ARTICLES
AND PRINTED MATTER

TO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|---|--------------------|---|-------------------|-----------------------------------|-----------------------------|--------|--------|
| | | Rate | Minimum Weight | Tariff MF-ICC No. A-164, Item: | Tariff ICC F 4501 20,000 | 30,000 | 40,000 |
| 1. Boxes | | | | | | | |
| Milk Bottle Caps | Medford, Mass. | 123 | 32,000 | 6225 | 213 | 154 | 118 |
| 2. Boxes | New Haven, Conn. | 133 | 32,000 | 6250 | 207 | 150 | 115 |
| 3. Printing Paper | Boston, Mass. | 135 | 32,000 | 7075 | 213 | 154 | 118 |
| 4. Wallpaper | Worcester, Mass. | 164 | 25,000 | 7725 | 210 | 151 | 117 |
| 5. Greeting Cards | Boston, Mass. | 162 | 30,000 | 8225 | 213 | 154 | 118 |
| 6. Cards, NOI | Springfield, Mass. | 195 | 23,000 | 8300 | 204 | 147 | 113 |
| 7. Cards, NOI | Webster, Mass. | 200 | 23,000 | 8300 | 210 | 151 | 117 |
| 8. Paper and Paper Articles in mixed shipments only, viz.: | | | | | | | |
| Blank Books with Cloth or Imitation Leather Covers. | | | | | | | |
| Printed Pads | Holyoke, Mass. | 166 | 30,000 | 8650 | 204 | 147 | 113 |
| Blank Books | Holyoke, Mass. | 159 | 30,000 | 8650 | 204 | 147 | 113 |
| Loose Leaf Binders or Covers, Paper, Pulpboard Cloth or Imitation Leather | Holyoke, Mass. | 169 | 30,000 | 8650 | 204 | 147 | 113 |
| Loose Leaf Binders or Covers, NOI (Note A) | Holyoke, Mass. | 249 | 30,000 | 8650 | 204 | 147 | 113 |
| Loose Leaf Fillers | | | | | | | |
| Paper Boxes | | | | | | | |
| Pulpboard or Fibreboard | Holyoke, Mass. | 103 | 30,000 | 8650 | 204 | 147 | 113 |
| Hardware I or S (Note A) | | | | | | | |
| Envelopes, Plastic (Note A) | Holyoke, Mass. | 203 | 30,000 | 8650 | 204 | 147 | 113 |

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STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BOOKS, MAGAZINES, PAPER, PAPER ARTICLES
AND PRINTED MATTER

TO: CHICAGO, ILL.

| <u>Commodity</u> | <u>From</u> | <u>Eastern Central Motor Carriers Association</u> | | | <u>NYNH&H RR</u> | | |
|---|------------------|---|---------------------------|---|--------------------------|---------------|--------------------------------|
| | | <u>Rate</u> | <u>Minimum Weight</u> | <u>Tariff MF-ICC No. A-164, Item:</u> | <u>Tariff ICC F 4501</u> | <u>20,000</u> | <u>30,000</u> <u>40,000</u> |
| 8. Paper and Paper Articles in mixed shipments only, viz.: Cont. | | | | | | | |
| Cabinets, Filing (Note A) | Holyoke, Mass. | 188 | 30,000 | 8650 | 204 | 147 | 113 |
| Briefcases, Leather (Note A) | Holyoke, Mass. | 317 | 30,000 | 8650 | 204 | 147 | 113 |
| Imitation Leather (Note A) | Holyoke, Mass. | 249 | 30,000 | 8650 | 204 | 147 | 113 |
| Cabinets, Filing, Aluminum (Note A) | Holyoke, Mass. | 275 | 30,000 | 8650 | 204 | 147 | 113 |
| (Note A) Articles making reference to this note apply only in mixed shipments with one or more articles named in this item. | | | | | | | |
| 9. Paper, Paper Articles and Printed matter in mixed carloads, viz.: | | | | | | | |
| Cards, Greeting | | | | | | | |
| Paper Wrapping | | | | | | | |
| Printed Matter | Boston, Mass. | 187 | 23,000 | 8775 | 213 | 154 | 118 |
| 10. Books, NOI | Boston, Mass. | 133 | 24,000 | 8850 | 213 | 154 | 118 |
| Books, NOI | Cambridge, Mass. | 131 | 30,000 | 8850 | 213 | 154 | 118 |
| 11. Books, NOI, unbound | Boston, Mass. | 131 | 30,000 | 8950 | 213 | 154 | 118 |
| Books, NOI, unbound | Cambridge, Mass. | 142 | 24,000 | 8950 | 213 | 154 | 118 |
| 12. Book or Magazine Pages | Providence, R.I. | 144 | 30,000 | 9060 | 216 | 156 | 120 |

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STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BOOKS, MAGAZINES, PAPER, PAPER ARTICLES
AND PRINTED MATTER

TO CHICAGO, ILL.

| <u>Commodity</u> | <u>From</u> | <u>Eastern Central Motor Carriers Association</u> | | | <u>NYNH&H RR</u> | | |
|--|----------------|---|-----------------------|---------------------------------------|--------------------------|---------------|---------------|
| | | <u>Rate</u> | <u>Minimum Weight</u> | <u>Tariff MF-ICC No. A-164, Item:</u> | <u>Tariff ICC F 4501</u> | | |
| | | | | | <u>20,000</u> | <u>30,000</u> | <u>40,000</u> |
| 13. Magazines or Periodicals, also Magazine Parts or Sections or Newspaper Supplements | Ansonia, Conn. | 146 | 30,000 | 9250 | 204 | 147 | 113 |

ALL COMMODITY RATES

TO: CHICAGO, ILL.

| <u>Eastern Central Motor Carriers Association</u> | | | | <u>NYNH&H RR</u> | |
|---|-------------|-----------------------|------------------------|--------------------------|---------------|
| | | | <u>Tariff MF-ICC</u> | <u>Tariff ICC F 4501</u> | |
| <u>From</u> | <u>Rate</u> | <u>Minimum Weight</u> | <u>No. A-170, Item</u> | <u>20,000</u> | <u>30,000</u> |
| 1. Boston, Mass. | 200 | 20,000 | 7025 | 213 | 154 |
| 2. Hartford, Conn. | 195 | 20,000 | 7025 | 207 | 150 |

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Witness H. D. Hartmann

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STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

ALCOHOLIC LIQUORS, NOITO: CHICAGO, ILL.

| From | Eastern Central Motor Carriers Association | | | | | | NYNH&H RR | | |
|-----------------------|--|----------------|---------|----------------|------------------|-------------------|-----------|--------|--|
| | In Glass | | In Bulk | | Tariff MF-ICC | Tariff ICC F 4501 | | | |
| | Rate | Minimum Weight | Rate | Minimum Weight | No. A-162, Item: | 20,000 | 30,000 | 40,000 | |
| 1. Boston, Mass. | 153 | 30,000 | 153 | 30,000 | 2025 | 213 | 154 | 118 | |
| 2. Hartford, Conn. | 158 | 30,000 | 151 | 30,000 | 2050 | 207 | 150 | 115 | |
| 3. Springfield, Mass. | 163 | 30,000 | 151 | 30,000 | 2100 | 204 | 147 | 113 | |

DAIRY AND PACKING HOUSE PRODUCTSTO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|--|---------------|---|---------|------------------|-------------------|--------|--------|
| | | Rate | Minimum | Tariff MF-ICC | Tariff ICC F 4501 | | |
| | | | Weight | No. A-166, Item: | 20,000 | 30,000 | 40,000 |
| 1. Oils other than Petroleum, Viz.: Vegetable, Sulphurized or Vulcanized, NOI. | Stamford, Ct. | 131 | 30,000 | 4550 | 211 | 152 | 118 |

I&S Docket 7131

Witness H. D. Hartmann
Sheet 17 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD,
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

BAKERY GOODS, CANNED GOODS, FOODSTUFFS

TO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | | | NYNH&H RR | | |
|--|--------------------------------|--|------------------|----------|-------------|-----------------------------------|-------------------|------------|------------|
| | | Minimum | | Minimum | | Tariff MF-ICC No. A-154, Item: | Tariff ICC F 4501 | | |
| | | Rate | Weight | Rate | Weight | | 20,000 | 30,000 | 40,000 |
| 1. Candy or Confectionery, NOI Candy Fondant Confectionery Chocolate Coating Cocoa or Chocolate Syrup Chocolate Locoa | Boston, Mass. Boston, Mass. | 121 121 | 28,000 28,000 | 114 - | 32,000 - | 1950 1950 | 213 213 | 154 154 | 118 118 |
| 2. Candy or Confectionery, NOI | Naugatuck, Conn. | 134 | 30,000 | - | - | 1980 | 204 | 147 | 113 |
| 3. Meats, Cooked, Cured or Preserved | New Haven, Conn. | 130 | 30,000 | - | - | 4100 | 207 | 150 | 115 |
| 4. Pizza Pie Mix | Worcester, Mass. | 146 | 24,000 | 133 | 30,000 | 4950 | 210 | 151 | 117 |
| 5. Syrup, Flavoring or Fruit | New Haven, Conn. | 161 | 20,000 | - | - | 5705 | 207 | 150 | 115 |

I&S Docket 7131

Witness H. D. Hartmann
Sheet 18 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

IRON AND STEEL ARTICLESTO: CHICAGO, ILL.

| Commodity | From | Eastern Central Motor Carriers Association | | | NYNH&H RR | | |
|-------------------------------|---------------------|--|------------------|------------------|-------------------|--------|--------|
| | | Rate | Minimum | Tariff MF-ICC | Tariff ICC F 4501 | | |
| | | | Weight | No. A-155, Item: | 20,000 | 30,000 | 40,000 |
| 1. Bolts, Nuts or Screws, NOI | Hartford, Conn. | (141 121 | 25,000 32,000 | | | | |
| 2. Bolts, Nuts or Screws, NOI | Willimantic, Conn. | 121 | 32,000 | 5700 | 207 | 150 | 115 |
| 3. Bolts or Nuts, NOI | | | | 5700 | 210 | 151 | 117 |
| Cotter Pins | | | | | | | |
| Screws, NOI | | | | | | | |
| Washers | Worcester, Mass. | 121 | 32,000 | 5800 | 210 | 151 | 117 |
| 4. Castings or Forgings, NOI | Worcester, Mass. | 125 | 32,000 | 5875 | 210 | 151 | 117 |
| 5. Fencing or Poultry Netting | Georgetown, Conn. | 122 | 32,000 | 5900 | 210 | 151 | 117 |
| 6. Rods |) | | | | | | |
| Wire, Galvanized |) (Bristol, R.I. | 132 | 23,000 | 6250 | 216 | 156 | 120 |
| Wire, Plain |) (Providence, R.I. | 132 | 23,000 | 6250 | 216 | 156 | 120 |
| Wire Rope or Strand |) (Worcester, Mass. | 125 | 23,000 | 6250 | 210 | 151 | 117 |
| 7. Wire, Covered or | | | | | | | |
| Insulated | Hartford, Conn. | 125 | 23,000 | 6625 | 207 | 150 | 115 |
| 8. Wire, Covered or | | | | | | | |
| Insulated | Springfield, Mass. | 122 | 23,000 | 6625 | 204 | 147 | 113 |
| 9. Wire Rope | New Haven, Conn. | 125 | 23,000 | 6675 | 207 | 150 | 115 |

I&S Docket 7131

Witness H. L. Hartmann
Sheet 19 of 19 Sheets

STATEMENT SHOWING COMPARISON OF MOTOR CARRIER RATES TO CHICAGO, ILL. FROM VARIOUS POINTS ON THE NEW HAVEN RAILROAD
WITH RAIL BOX CAR RATES FOR SIMILAR QUANTITIES IN NH RR TARIFF I.C.C. F 4501, SECTION 2

IRON AND STEEL ARTICLES

TO: CHICAGO, ILL.

| Commodity | From | Rate | Eastern Central Motor Carriers Association | | NYNH&H RR | | |
|--------------------------------------|-------------------|---------------|---|-----------------------------------|-----------------------------|--------|--------|
| | | | Minimum Weight | Tariff MF-ICC No. A-155, Item: | Tariff ICC F 4501 20,000 | 30,000 | 40,000 |
| 10. Wire Goods and Iron and Steel) | | | | | | | |
| Articles in mixed shipments) | | | | | | | |
| only, viz.:) | | | | | | | |
| Iron Wire Netting (Note A)) | (Clinton, Mass. | (112 (Note B) | 32,000 | 6925 | 207 | 150 | 115 |
| Wire Strand (Note A)) | (Worcester, Mass. | (141 (Note C) | 30,000 | 6925 | 210 | 151 | 117 |
| Wire Cloth $\frac{1}{2}$ inch mesh) | | | | | | | |
| or finer) | | | | | | | |
| (Note A) The aggregate weight | | | | | | | |
| of these commodities | | | | | | | |
| not to exceed 33 $\frac{1}{3}\%$ | | | | | | | |
| of the total weight of | | | | | | | |
| the shipment. | | | | | | | |
| (Note B) Applicable only on Wire | | | | | | | |
| Netting and Wire Strand. | | | | | | | |
| (Note C) Applicable only on Wire | | | | | | | |
| Cloth. | | | | | | | |

I&S Docket N o. 7131
 Witness: H. D. Hartmann

CARLOAD TRAFFIC, 10,000 LBS. OR OVER, RATED 71¢
 PER CWT. OR HIGHER, ORIGINATING AT POINTS ON THE
 NEW HAVEN RAILROAD, WHEN DESTINED TO CHICAGO,
 ILLINOIS, EXCLUSIVE OF ALL COMMODITY ACCOUNTS
 799 AND 950, FROM JULY TO DECEMBER, 1957

| <u>Weight</u> | <u>Revenue received</u> | <u>Revenues under Section 2, all- commodity rates</u> | <u>Percent Reduction</u> |
|------------------|-----------------------------|---|------------------------------|
| 10,000 to 20,000 | \$ 68,827.38 | \$ 66,704.35 | 3.1% |
| 20,000 to 30,000 | 56,172.41 | 52,049.46 | 7.3% |
| 30,000 to 40,000 | 90,474.51 | 80,775.63 | 10.7% |
| 40,000 to 50,000 | 78,854.93 | 73,396.78 | 6.9% |
| 50,000 to 60,000 | 49,876.40 | 42,577.93 | 14.6% |
| 60,000 to 70,000 | 21,169.15 | 17,626.54 | 16.7% |
| Over 70,000 | <u>53,548.68</u> | <u>46,281.83</u> | <u>13.6%</u> |
| TOTALS | \$418,923.46 | \$379,412.52 | 9.4% |

[fol. 820]

BEFORE THE INTERSTATE COMMERCE COMMISSION
 RESPONDENTS' EXHIBIT 23

STATEMENT SHOWING SHIPMENTS FROM NEW HAVEN STATIONS
TO CHICAGO - ACCOUNT #799 AND 950 FOR THE MONTHS OF
JULY TO DECEMBER 1957

| <u>WEIGHT</u> | <u>NO. OF CARS</u> | <u>COM. #</u> | <u>DESCRIPTION</u> | <u>TOTAL REVENUE</u> | <u>AVERAGE REVENUE PER CAR</u> | <u>AVERAGE WEIGHT PER CAR</u> |
|-------------------|--------------------|---------------|--------------------|----------------------|--|---------------------------------------|
| 849,087 | 27 | 799 | All Commodities | \$ 16,550.15 | \$612.97 | 31,448 |
| 13,055,488 | 736 | 799 | " " | 250,739.26 | 340.68 | 17,738 |
| 1,065,057 | 51 | 799 | " " | 19,620.13 | 384.71 | 20,883 |
| 534,683 | 20 | 799 | " " | 10,716.43 | 535.82 | 26,734 |
| 3,065,700 | 93 | 799 | " " | 57,151.30 | 614.53 | 32,965 |
| <u>11,061,532</u> | <u>511</u> | <u>799</u> | <u>" "</u> | <u>184,164.46</u> | <u>360.40</u> | <u>21,647</u> |
| 29,631,557 | 1,438 | | | \$ 538,941.73 | \$374.79 | 20,606 |
| | | | | | | |
| 9,809,448 | 464 | 950 | All Commodities | \$ 181,731.79 | \$391.66 | 21,141 |
| 35,101,700 | 1,488 | 950 | " " | 645,611.00 | 433.88 | 23,590 |
| 1,254,882 | 49 | 950 | " " | 22,559.34 | 460.39 | 25,610 |
| 1,014,619 | 39 | 950 | " " | 18,863.40 | 483.68 | 26,016 |
| 32,603,958 | 1,955 | 950 | " " | 590,458.74 | 302.02 | 16,677 |
| <u>4,411,100</u> | <u>192</u> | <u>950</u> | <u>" "</u> | <u>78,933.82</u> | <u>411.11</u> | <u>22,974</u> |
| 84,195,707 | 4,187 | | | \$1,538,158.09 | \$367.37 | 20,109 |
| | | | | | | |
| Total 950 and 799 | | | | | | |
| 113,827,264 | 5,625 | | | \$2,077,099.82 | \$369.26 | 20,236 |

[fol. 822]

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 25

I&S Docket No. 7131
Witness: H. D. Hartmann,

INTERLINE FORWARDED NEW HAVEN RAILROAD
FORWARDER TRAFFIC ACCOUNT 950

| <u>Year</u> | <u>No. of Cars</u> | <u>No. of Tons</u> | <u>Freight Revenue</u> | <u>Average Net Tons per Car</u> | <u>Average Revenue per Car</u> | <u>Average Revenue per Ton</u> |
|-------------|--------------------|--------------------|------------------------|---|--|--|
| 1947 | 12,977 | 222,140 | 21,280,529 | 17.12 | 98.68 | 5.76 |
| 1948 | 12,654 | 212,245 | 1,558,451 | 16.77 | 123.16 | 7.34 |
| 1949 | 12,972 | 181,593 | 1,425,817 | 14.00 | 109.91 | 7.85 |
| 1950 | 19,178 | 235,628 | 1,743,306 | 12.29 | 90.90 | 7.40 |
| 1951 | 19,679 | 241,842 | 1,861,140 | 12.29 | 94.57 | 7.70 |
| 1952 | 22,351 | 255,025 | 2,117,959 | 11.41 | 94.76 | 8.30 |
| 1953 | 21,143 | 260,307 | 2,184,912 | 12.31 | 103.34 | 8.39 |
| 1954 | 21,669 | 237,486 | 1,961,840 | 10.96 | 90.54 | 8.26 |
| 1955 | 27,945 | 290,766 | 2,424,549 | 10.40 | 86.76 | 8.34 |
| 1956 | 25,677 | 266,705 | 2,330,852 | 10.39 | 90.78 | 8.74 |
| 1957 | 25,296 | 245,007 | 2,390,974 | 9.69 | 94.52 | 9.76 |
| 1958 | 22,755 | 218,565 | 2,215,282 | 9.61 | 97.35 | 10.14 |

INTERLINE FORWARDED NEW HAVEN RAILROAD
MANUFACTURED AND MISCELLANEOUS - ACCOUNT 940

| <u>Year</u> | <u>No. of Cars</u> | <u>No. of Tons</u> | <u>Freight Revenue</u> | <u>Average Net Tons per Car</u> | <u>Average Revenue per Car</u> | <u>Average Revenue per Ton</u> |
|-------------|--------------------|--------------------|------------------------|---|--|--|
| 1947 | 125,387 | 2,941,557 | \$10,816,849 | 23.46 | \$86.27 | \$3.68 |
| 1948 | 114,976 | 2,715,406 | 12,349,571 | 23.62 | 107.41 | 4.55 |
| 1949 | 80,761 | 1,880,431 | 9,335,418 | 23.28 | 115.59 | 4.96 |
| 1950 | 91,557 | 2,176,411 | 10,574,208 | 23.77 | 115.49 | 4.86 |
| 1951 | 103,213 | 2,495,032 | 12,673,130 | 24.17 | 122.79 | 5.08 |
| 1952 | 97,232 | 2,396,266 | 13,169,243 | 24.64 | 135.44 | 5.50 |
| 1953 | 96,534 | 2,322,756 | 13,082,636 | 24.06 | 135.52 | 5.63 |
| 1954 | 76,056 | 1,722,073 | 9,832,663 | 22.64 | 129.28 | 5.71 |
| 1955 | 81,801 | 1,904,273 | 10,375,325 | 23.28 | 126.84 | 5.45 |
| 1956 | 83,014 | 2,043,321 | 11,056,190 | 24.61 | 133.18 | 5.41 |
| 1957 | 75,643 | 1,795,143 | 10,374,892 | 23.73 | 137.16 | 5.70 |
| 1958 | 63,399 | 1,479,902 | 8,611,951 | 23.34 | 135.84 | 5.82 |

FREIGHT FORWARDER TRAFFIC IN BOX CARS
MOVING UNDER SECTION 1 OF I.C.C. F 4501
FROM BOSTON TO CHICAGO FOR SEPTEMBER 2, 1959

| No. of Cars | Weight | Revenue | Average Rate Per Cwt. |
|----------------|---------|-----------|-----------------------------|
| 2 | 33,099 | \$ 632.68 | \$1.91 |
| 5 | 77,288 | 1485.67 | 1.92 |
| 3 | 34,543 | 678.52 | 1.96 |
| 5 | 49,589 | 939.46 | 1.89 |
| 6 | 92,418 | 1747.68 | 1.89 |
| 3 | 46,198 | 873.89 | 1.89 |
| 1 | 30,964 | 484.66 | 1.57 |
| 1 | 33,558 | 528.87 | 1.57 |
| 1 | 31,874 | 512.63 | 1.61 |
| 1 | 30,494 | 46,592 | 1.53 |
| 1 | 34,820 | 552.98 | 1.59 |
| 5 | 56,548 | 1071.96 | 1.90 |
| TOTALS: 34 | 559,678 | \$9964.92 | \$1.78 |

AVERAGE WEIGHT PER CAR: 16,461

AVERAGE REVENUE PER CAR: \$293.09

DOCKET 28300 FIRST CLASS RATE, INCLUDING X212: \$4.73

PERCENT \$1.78 IS TO \$4.73: 37.6%

STATEMENT SHOWING NUMBER OF CARS, WEIGHT AND REVENUE ON TRAFFIC THAT MOVED UNDER SECTION 2 OF ICC F 4501 FOR THE PERIOD FROM JULY 16, 1959 TO SEPTEMBER 30, 1959. ALSO A COMPARISON OF REVENUE THE RAIL LINES WOULD HAVE RECEIVED HAD THE TRAFFIC MOVED AT PUBLISHED RAIL RATES OTHER THAN SECTION 2 OF ICC F 4501

I&S Docket No. 7131
Witness: H. D. Hartmann

| Section 2 of ICC F 4501 | | | | | Rail Rates other than Section 2 of ICC F 4501 | | | | |
|--|-------------|------------|--------------|---------------------|---|--------------|--------------|---------------------------|-------------------------|
| Weight Bracket | No. of Cars | Weight | Revenue | Average Wt. per Car | Average Rev. per Car | Rated Weight | Revenue | Average Rated Wt. per Car | Average Revenue per Car |
| 1) Traffic that previously moved via rail in box cars | | | | | | | | | |
| 20,000 | 1 | 20,179 | \$ 423.75 | 20,179 | \$ 423.75 | 26,500 | \$ 429.30 | 26,500 | \$ 429.30 |
| 30,000 | 29 | 875,294 | 14,276.19 | 30,182 | 492.28 | 883,018 | 15,037.06 | 30,449 | 518.52 |
| 40,000 | 151 | 6,161,400 | 78,593.40 | 40,804 | 520.49 | 5,531,492 | 93,939.37 | 36,632 | 622.12 |
| 50,000 | 14 | 718,377 | 8,215.69 | 51,313 | 586.84 | 702,037 | 12,170.20 | 50,146 | 869.30 |
| 60,000 | 15 | 932,064 | 9,389.48 | 62,138 | 625.97 | 925,796 | 13,866.76 | 61,720 | 924.45 |
| 70,000 | 31 | 2,287,848 | 21,906.64 | 73,802 | 706.67 | 2,279,099 | 28,784.57 | 73,519 | 928.53 |
| 80,000 | 9 | 745,144 | 6,571.89 | 82,794 | 730.21 | 745,144 | 8,058.74 | 82,794 | 895.42 |
| 100,000 | 1 | 103,394 | 899.53 | 103,394 | 899.53 | 103,394 | 1,674.98 | 103,394 | 1,674.98 |
| 110,000 | 4 | 452,377 | 4,433.29 | 113,094 | 1,108.32 | 452,377 | 4,568.44 | 113,094 | 1,142.11 |
| Total | 255 | 12,296,077 | \$144,709.86 | 48,220 | \$ 567.49 | 11,648,857 | \$178,529.42 | 45,682 | \$ 700.11 |
| 2) Traffic that previously moved partly via rail and partly via other than rail. | | | | | | | | | |
| 30,000 | 4 | 122,743 | \$ 1,878.73 | 30,686 | \$ 469.68 | 118,684 | \$ 2,097.63 | 29,671 | \$ 524.41 |
| 40,000 | 27 | 1,119,123 | 13,366.23 | 41,079 | 491.34 | 1,055,408 | 17,258.95 | 39,089 | 639.22 |
| 50,000 | 12 | 602,424 | 6,451.39 | 50,202 | 537.62 | 582,089 | 9,545.84 | 48,507 | 795.49 |
| 60,000 | 4 | 249,867 | 2,251.83 | 62,466 | 562.96 | 238,547 | 3,892.42 | 59,637 | 973.11 |
| 70,000 | 11 | 803,393 | 7,056.39 | 73,035 | 641.49 | 798,628 | 11,302.68 | 72,602 | 1,027.51 |
| 80,000 | 4 | 341,568 | 2,955.21 | 85,392 | 738.80 | 341,568 | 5,533.40 | 85,392 | 1,383.35 |
| 90,000 | 3 | 280,745 | 2,442.49 | 93,582 | 814.16 | 280,745 | 4,547.07 | 93,581 | 1,515.69 |
| 100,000 | 2 | 205,766 | 1,779.76 | 102,883 | 889.88 | 205,766 | 3,333.40 | 102,883 | 1,666.70 |
| Total | 67 | 3,725,627 | \$ 38,182.03 | 55,606 | \$ 569.88 | 3,621,435 | \$ 57,511.39 | 54,051 | \$ 858.37 |
| 3) Traffic that previously moved via other than railroad. | | | | | | | | | |
| 40,000 | 18 | 766,864 | \$ 9,234.71 | 42,604 | \$ 513.04 | 711,087 | \$ 12,578.75 | 39,505 | \$ 690.88 |
| 50,000 | 8 | 402,258 | 4,293.03 | 50,282 | 536.63 | 388,603 | 6,302.10 | 48,575 | 700.26 |
| 60,000 | 2 | 124,528 | 1,123.20 | 62,264 | 561.60 | 122,358 | 2,201.95 | 61,179 | 1,100.98 |
| 70,000 | 4 | 290,779 | 2,529.79 | 72,695 | 632.45 | 290,779 | 3,378.95 | 72,445 | 844.73 |
| 80,000 | 10 | 846,235 | 7,341.53 | 84,624 | 734.15 | 846,235 | 9,294.47 | 84,624 | 929.45 |
| Total | 42 | 2,430,664 | \$ 24,522.26 | 57,873 | \$ 583.82 | 2,359,062 | \$ 33,756.22 | 56,168 | \$ 803.71 |
| Grand Total | 364 | 18,452,368 | \$207,414.15 | 50,693 | \$ 569.82 | 17,629,354 | \$269,797.03 | 48,432 | \$ 741.20 |

BEFORE THE INTERSTATE COMMERCE COMMISSION

[fol. 826]

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RESPONDENTS' EXHIBIT 29
STATEMENT OF SHIPMENTS MOVING UNDER PLAN 3 FOR MONTH OF AUGUST 1959 SHOWING
WEIGHT AND CHARGES, ALSO WEIGHT AND CHARGES THAT WOULD APPLY UNDER SECTION
2 OF N.Y.N.H. & H.R.R. TARIFF ICC F 4501

I&S Locket No. 7131

Witness: H. L. Hartmann

Sheet 1 of 2 Sheets

Charges based on Sec. 2
of NHR ICC F 4501

| Origin | Destination | No. of Cars | No. of Trailers | Weight | As Charged | Weight | Rate | |
|------------------|---------------|----------------|--------------------|-----------|-------------|------------------|------|-------------|
| Providence, R.I. | Chicago, Ill. | 1 | 2 | 51,128 | \$ 494.50 | 51,128 | 108 | \$ 552.18 |
| New Haven, Conn. | Chicago, Ill. | 1 | 2 | 64,894 | 494.50 | 64,894 | 92 | 597.02 |
| " | " | 1 | 2 | 59,189 | 494.50 | 59,189 as 60,000 | 92 | 552.00 |
| " | " | 1 | 2 | 58,665 | 494.50 | 58,665 as 60,000 | 92 | 552.00 |
| " | " | 1 | 2 | 47,484 | 494.50 | 47,484 as 50,000 | 104 | 520.00 |
| " | " | 1 | 2 | 75,098 | 530.44 | 75,098 | 87 | 663.35 |
| " | " | 2 | 2 | 56,009 | 494.50 | 56,009 as 60,000 | 92 | 552.00 |
| " | " | 1 | 2 | 61,947 | 494.50 | 61,947 | 92 | 569.91 |
| " | " | 1 | 2 | 70,036 | 494.75 | 70,036 | 87 | 609.31 |
| " | " | 1 | 2 | 70,793 | 500.09 | 70,793 | 87 | 615.90 |
| " | " | 1 | 2 | 66,525 | 494.50 | 66,525 as 70,000 | 87 | 609.00 |
| " | " | 1 | 2 | 75,590 | 533.91 | 75,590 | 87 | 657.63 |
| " | " | 2 | 2 | 69,844 | 494.50 | 69,844 as 70,000 | 87 | 609.00 |
| " | " | 2 | 2 | 55,208 | 494.50 | 55,208 as 60,000 | 92 | 552.00 |
| " | " | 2 | 2 | 42,318 | 494.50 | 42,318 | 115 | 486.66 |
| " | " | 2 | 2 | 54,686 | 600.00 | 54,686 as 60,000 | 103 | 618.00 |
| " | " | 1 | 2 | 52,742 | 600.00 | 52,742 | 116 | 611.81 |
| " | " | 1 | 2 | 57,665 | 600.00 | 57,665 as 60,000 | 103 | 618.00 |
| " | " | 2 | 2 | 59,370 | 600.00 | 59,370 as 60,000 | 103 | 618.00 |
| " | " | 2 | 2 | 52,528 | 600.00 | 52,528 | 116 | 609.32 |
| " | " | 2 | 2 | 51,060 | 600.00 | 51,060 | 116 | 592.30 |
| " | " | 2 | 2 | 54,320 | 600.00 | 54,320 as 60,000 | 103 | 618.00 |
| " | " | 2 | 2 | 47,267 | 600.00 | 47,267 as 50,000 | 116 | 580.00 |
| " | " | 2 | 2 | 55,957 | 600.00 | 55,957 as 60,000 | 103 | 618.00 |
| " | " | 2 | 2 | 49,725 | 600.00 | 49,725 as 50,000 | 116 | 580.00 |
| " | " | 2 | 2 | 61,306 | 600.00 | 61,306 | 103 | 631.45 |
| " | " | 1 | 2 | 56,097 | 600.00 | 56,097 as 60,000 | 103 | 618.00 |
| " | " | 2 | 2 | 54,287 | 600.00 | 54,287 as 60,000 | 103 | 618.00 |
| | | 41 | 54 | 1,580,610 | \$14,804.19 | 1,628,312 | | \$16,076.66 |

STATEMENT OF SHIPMENTS MOVING UNDER PLAN 3 FOR MONTH OF AUGUST 1959 SHOWING
WEIGHT AND CHARGES, ALSO WEIGHT AND CHARGES THAT WOULD APPLY UNDER SECTION
2 OF N.Y.N.H. & H.R.R. TARIFF ICC F 4501

I&S Docket No. 7131
Witness: H. L. Hartmann

202
[fol. 827]

Sheet 2 of 2 Sheets

| Origin | Destination | No. of Cars | No. of Trailers | Weight | As Charged | Weight | Rate | Charges based on Sec. 2 of NHRR ICC F 4501 |
|---------------|---------------|----------------|--------------------|---------|------------|------------------|------|---|
| Boston, Mass. | Chicago, Ill. | 1 | 2 | 47,995 | \$ 494.50 | 47,995 as 50,000 | 106 | \$ 530.00 |
| " " | " " | 1 | 2 | 45,813 | 494.50 | 45,813 as 50,000 | 106 | 530.00 |
| " " | " " | 1 | 2 | 52,732 | 494.50 | 52,732 | 106 | 558.96 |
| " " | " " | 1 | 2 | 74,315 | 524.92 | 74,315 | 90 | 668.84 |
| " " | " " | 1 | 2 | 49,517 | 494.50 | 49,517 as 50,000 | 106 | 530.00 |
| " " | " " | 1 | 2 | 46,291 | 494.50 | 46,291 as 50,000 | 106 | 530.00 |
| " " | " " | 1 | 2 | 53,428 | 494.50 | 53,428 | 106 | 566.34 |
| " " | " " | 1 | 2 | 51,619 | 494.50 | 51,619 | 106 | 547.16 |
| " " | " " | 1 | 2 | 50,703 | 494.50 | 50,703 | 106 | 537.45 |
| " " | " " | 1 | 2 | 44,027 | 494.50 | 44,027 | 118 | 519.52 |
| " " | " " | 1 | 2 | 41,378 | 494.50 | 41,378 | 118 | 488.26 |
| " " | " " | 1 | 2 | 41,657 | 494.50 | 41,657 | 118 | 491.55 |
| " " | " " | 1 | 2 | 38,730 | 494.50 | 38,730 as 40,000 | 118 | 472.00 |
| " " | " " | 1 | 2 | 38,347 | 494.50 | 38,347 as 40,000 | 118 | 472.00 |
| " " | " " | 1 | 2 | 50,249 | 494.50 | 50,249 | 106 | 532.64 |
| " " | " " | 1 | 2 | 39,468 | 494.50 | 39,468 as 40,000 | 118 | 472.00 |
| | | 16 | 32 | 766,269 | \$7,942.42 | 780,108 | | \$8,446.72 |

Average Revenue per car

\$ 400.71

\$ 569.89*

570.31

43
* Based on 44 Cars.

I&S Docket No. 7131
Witness: H. H. Coyle

Sheet 1 of 2 Sheets

STATEMENT SHOWING THE FULLY DISTRIBUTED COST TAKEN FROM I.C.C. STATEMENT 5-58, "RAIL CARLOAD COST SCALES BY TERRITORIES FOR THE YEAR 1957" ISSUED BY BUREAU OF ACCOUNTS, COST FINDING AND VALUATION AND PROPOSED RATES BASED ON 28300 MILES FROM STATIONS ON THE NEW HAVEN RAILROAD AS SHOWN.

| TO: CHICAGO, ILL. GIBSON, IND. HAMMOND, IND. FROM NHRR STATIONS | 28300 Miles | 1st Class Rates | 20,000 | | | 30,000 | | | 40,000 | | | 50,000 | | | 60,000 | | | 70,000 | | |
|---|----------------|-----------------------|--------|-------|---------------|--------|-------|---------------|--------|-------|---------------|--------|------|---------------|--------|------|---------------|--------|------|---------------|
| | | | OP | F.D. | Pro- posed | OP | F.D. | Pro- posed | OP | F.D. | Pro- posed | OP | F.D. | Pro- posed | OP | F.D. | Pro- posed | OP | F.D. | Pro- posed |
| | | | Cost | Cost | Rate | Cost | Cost | Rate | Cost | Cost | Rate | Cost | Cost | Rate | Cost | Cost | Rate | Cost | Cost | Rate |
| Springfield, Mass. (A) | 889 | 453 | 137.1 | 159.8 | 204 | 95.6 | 118.3 | 147 | 74.9 | 97.6 | 113 | 62.4 | 85.1 | 102 | 54.2 | 76.8 | 91 | 48.2 | 70.9 | 86 |
| Waterbury, Conn. | 898 | 453 | 138.2 | 161.1 | 204 | 96.4 | 119.2 | 147 | 75.5 | 98.4 | 113 | 63.0 | 85.8 | 102 | 54.6 | 77.4 | 91 | 48.6 | 71.5 | 86 |
| Hartford, Conn. (B) | 905 | 460 | 138.9 | 162.0 | 207 | 96.9 | 120.0 | 150 | 75.9 | 99.0 | 115 | 63.3 | 86.3 | 104 | 54.9 | 77.9 | 92 | 48.8 | 71.9 | 87 |
| New Haven, Conn. (C) | 921 | 460 | 140.8 | 164.2 | 207 | 98.2 | 121.6 | 150 | 76.9 | 100.3 | 115 | 64.2 | 87.6 | 104 | 55.7 | 79.0 | 92 | 49.5 | 72.9 | 87 |
| Fitchburg, Mass. (D) | 923 | 460 | 141.0 | 164.5 | 207 | 98.4 | 121.8 | 150 | 77.0 | 100.5 | 115 | 64.3 | 87.7 | 104 | 55.8 | 79.1 | 92 | 49.6 | 73.1 | 87 |
| Willimantic, Conn. | 933 | 466 | 142.2 | 165.9 | 210 | 99.2 | 122.9 | 151 | 77.7 | 101.4 | 117 | 64.8 | 88.5 | 105 | 56.2 | 79.8 | 93 | 50.0 | 73.7 | 89 |
| Worcester, Mass. | 934 | 466 | 142.3 | 166.0 | 210 | 99.3 | 123.0 | 151 | 77.7 | 101.5 | 117 | 64.9 | 88.5 | 105 | 56.3 | 79.9 | 93 | 50.1 | 73.8 | 89 |
| Stamford, Conn. (E) | 938 | 466 | 142.8 | 166.6 | 210 | 99.6 | 123.4 | 151 | 78.0 | 101.8 | 117 | 65.1 | 88.9 | 105 | 56.5 | 80.2 | 93 | 50.2 | 74.0 | 89 |
| New London, Conn. | 956 | 473 | 144.9 | 169.1 | 213 | 101.1 | 125.2 | 154 | 79.2 | 103.4 | 118 | 66.1 | 90.2 | 106 | 57.3 | 81.4 | 95 | 51.0 | 75.2 | 90 |
| Boston, Mass. (F) | 973 | 473 | 146.9 | 171.4 | 213 | 102.4 | 127.0 | 154 | 80.3 | 104.8 | 118 | 67.0 | 91.5 | 106 | 58.1 | 82.6 | 95 | 51.7 | 76.3 | 90 |
| Providence, R.I. (G) | 978 | 481 | 147.4 | 172.1 | 216 | 102.9 | 127.5 | 156 | 80.6 | 105.3 | 120 | 67.3 | 91.9 | 108 | 58.4 | 82.9 | 96 | 51.9 | 76.6 | 91 |
| Taunton, Mass. (H) | 989 | 481 | 148.7 | 173.6 | 216 | 103.8 | 128.7 | 156 | 81.3 | 106.2 | 120 | 67.9 | 92.7 | 108 | 58.9 | 83.7 | 96 | 52.4 | 77.3 | 91 |

- (A) Same rates apply from: Holyoke, Mass.
 (B) Same rates apply from: New Britain, Conn.
 (C) Same rates apply from: Bridgeport, Meriden, and Wallingford, Conn.
 (D) Same rates apply from: Clinton, Mass.
 (E) Same rates apply from: So. Norwalk, Conn.
 (F) Same rates apply from: Cabot and So. Braintree, Mass.
 (G) Same rates apply from: E. Providence, Fox Point, Harbor Point, Pawtucket, So. Providence and Bristol, Rhode Island
 (H) Same rates apply from: Fall River, New Bedford and Wapuppa, Mass.

I&S Docket No. 721
Witness: H. H. Coyne

Sheet 2 of 2 Sheets

STATEMENT SHOWING THE FULLY DISTRIBUTED COST TAKEN FROM I.C.C. STATEMENT 5-58,
"RAIL CARLOAD COST SCALES BY TERRITORIES FOR THE YEAR 1957" ISSUED BY BUREAU OF
ACCOUNTS, COST FINDING AND VALUATION AND PROPOSED RATES BASED ON 28300 MILES
FROM STATIONS ON THE N.H.R.R. AS SHOWN.

| TO ST. LOUIS AND EAST ST. LOUIS FROM N.H.R.R. STATIONS | 28300 Miles | 1st Class Rates | 20,000 | | | 30,000 | | | 40,000 | | | 50,000 | | | 60,000 | | | 70,000 | | |
|--|----------------|-----------------------|------------|--------------|-----------------------|------------|--------------|-----------------------|------------|--------------|-----------------------|------------|--------------|-----------------------|------------|--------------|-----------------------|------------|--------------|-----------------------|
| | | | OP Cost | F.D. Cost | Pro- posed Rate | OP Cost | F.D. Cost | Pro- posed Rate | OP Cost | F.D. Cost | Pro- posed Rate | OP Cost | F.D. Cost | Pro- posed Rate | OP Cost | F.D. Cost | Pro- posed Rate | OP Cost | F.D. Cost | Pro- posed Rate |
| Stamford, Conn.(A) | 1088 | 508 | 160.2 | 187.3 | 229 | 111.9 | 138.9 | 165 | 87.7 | 114.7 | 127 | 73.2 | 100.2 | 114 | 63.6 | 90.6 | 102 | 56.6 | 83.6 | 97 |
| Springfield, Mass.(B) | 1089 | 508 | 160.4 | 187.4 | 229 | 112.0 | 139.0 | 165 | 87.7 | 114.8 | 127 | 73.2 | 100.2 | 114 | 63.6 | 90.6 | 102 | 56.7 | 83.7 | 97 |
| Waterbury, Conn. | 1099 | 508 | 161.5 | 188.8 | 229 | 112.8 | 140.1 | 165 | 88.4 | 115.6 | 127 | 73.8 | 101.0 | 114 | 64.1 | 91.3 | 102 | 57.1 | 84.3 | 97 |
| Hartford, Conn. (C) | 1106 | 516 | 162.3 | 189.7 | 232 | 113.4 | 140.8 | 168 | 88.8 | 116.2 | 129 | 74.1 | 101.6 | 116 | 64.4 | 91.8 | 103 | 57.4 | 84.8 | 98 |
| New Haven, Conn.(D) | 1122 | 516 | 164.2 | 191.9 | 232 | 114.7 | 142.5 | 168 | 89.9 | 117.6 | 129 | 75.0 | 102.8 | 116 | 65.2 | 92.9 | 103 | 58.0 | 85.8 | 98 |
| Fitchburg, Mass.(E) | 1124 | 516 | 164.4 | 192.2 | 232 | 114.8 | 142.7 | 168 | 90.0 | 117.8 | 129 | 75.1 | 102.9 | 116 | 65.3 | 93.1 | 103 | 58.1 | 85.9 | 98 |
| Willimantic, Conn. | 1134 | 522 | 165.6 | 193.6 | 235 | 115.7 | 143.7 | 170 | 90.6 | 118.7 | 131 | 75.7 | 103.7 | 117 | 65.7 | 93.7 | 104 | 58.6 | 86.6 | 99 |
| Worcester, Mass. | 1135 | 522 | 165.7 | 193.7 | 235 | 115.7 | 143.8 | 170 | 90.7 | 118.7 | 131 | 75.7 | 103.8 | 117 | 65.8 | 93.8 | 104 | 58.6 | 86.6 | 99 |
| New London, Conn. | 1157 | 529 | 168.3 | 196.8 | 238 | 117.5 | 146.1 | 172 | 92.1 | 120.6 | 132 | 76.9 | 105.4 | 119 | 66.8 | 95.3 | 106 | 59.5 | 88.0 | 101 |
| Boston, Mass. (F) | 1174 | 529 | 170.3 | 199.8 | 238 | 118.9 | 147.9 | 172 | 93.2 | 122.1 | 132 | 77.8 | 106.7 | 119 | 67.6 | 96.5 | 106 | 60.2 | 89.1 | 101 |
| Providence, R.I.(G) | 1179 | 537 | 170.8 | 199.8 | 242 | 119.3 | 148.3 | 175 | 93.5 | 122.4 | 134 | 78.1 | 107.1 | 121 | 67.8 | 96.8 | 107 | 60.5 | 89.5 | 102 |
| Taunton, Mass. (H) | 1190 | 537 | 172.1 | 201.3 | 242 | 120.2 | 149.5 | 175 | 94.2 | 123.5 | 134 | 78.7 | 107.9 | 121 | 68.4 | 97.6 | 107 | 60.9 | 90.2 | 102 |

- (A) Same rates apply from: So. Norwalk, Conn.
 (B) Same rates apply from: Holyoke, Mass.
 (C) Same rates apply from: New Britain, Conn.
 (D) Same rates apply from: Bridgeport, Meriden and Wallingford, Conn.
 (E) Same rates apply from: Clinton, Mass.
 (F) Same rates apply from: Cabot and So. Braintree, Mass.
 (G) Same rates apply from: E. Providence, Fox Point, Harbor Point, Pawtucket, So. Providence and Bristol, Rhode Island.
 (H) Same rates apply from: Fall River, New Bedford and Watuppa, Mass.

I&S Docket No. 7131
Witness: H. H. Coyle

Sheet 1 of 2 Sheets

PER CENT REVENUE OF COSTS ON CHICAGO RATES

| TO: | 20 000 lbs. | | | | 30 000 lbs. | | | | 40 000 lbs. | | 50 000 lbs. | | 60 000 lbs. | | 70 000 lbs. | |
|------------------------|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|
| CHICAGO, ILL. | 20 000 Rate | | 40 000 Rate | | 30 000 Rate | | 40 000 Rate | | | | | | | | | |
| GIBSON, IND. | | | | | | | | | | | | | | | | |
| HAMMOND, IND. | | | | | | | | | | | | | | | | |
| FROM NHRR STATIONS | OP | FD | OP | FD | OP | FD | OP | FD | OP | FD | OP | FD | OP | FD | OP | FD |
| Springfield, Mass. (A) | 149 | 128 | 165 | 141 | 154 | 124 | 158 | 127 | 151 | 116 | 164 | 120 | 168 | 118 | 178 | 121 |
| Waterbury, Conn. | 148 | 127 | 164 | 140 | 152 | 123 | 156 | 126 | 150 | 115 | 162 | 119 | 167 | 118 | 177 | 120 |
| Hartford, Conn. (B) | 149 | 128 | 166 | 142 | 155 | 123 | 158 | 128 | 152 | 116 | 164 | 121 | 168 | 118 | 178 | 121 |
| New Haven, Conn. (C) | 147 | 126 | 164 | 140 | 153 | 123 | 156 | 126 | 150 | 115 | 162 | 119 | 165 | 116 | 176 | 119 |
| Fitchburg, Mass. (D) | 147 | 126 | 163 | 140 | 152 | 123 | 156 | 126 | 149 | 114 | 162 | 119 | 165 | 116 | 175 | 119 |
| Willimantic, Conn. | 148 | 127 | 165 | 141 | 152 | 123 | 157 | 127 | 151 | 115 | 162 | 119 | 165 | 117 | 178 | 121 |
| Worcester, Mass. | 148 | 127 | 165 | 141 | 152 | 123 | 157 | 127 | 151 | 115 | 162 | 119 | 165 | 116 | 178 | 121 |
| Stamford, Conn. (E) | 147 | 126 | 164 | 140 | 152 | 122 | 157 | 126 | 150 | 115 | 161 | 118 | 165 | 116 | 177 | 120 |
| New London, Conn. | 147 | 126 | 163 | 140 | 152 | 123 | 156 | 126 | 149 | 114 | 160 | 118 | 166 | 117 | 176 | 120 |
| Boston, Mass. (F) | 145 | 124 | 161 | 138 | 150 | 121 | 154 | 124 | 147 | 113 | 158 | 116 | 164 | 115 | 174 | 118 |
| Providence, R.I. (G) | 147 | 126 | 163 | 139 | 152 | 122 | 155 | 125 | 149 | 114 | 160 | 118 | 164 | 116 | 175 | 119 |
| Fall River, Mass. (H) | 145 | 124 | 161 | 138 | 150 | 121 | 154 | 124 | 148 | 113 | 159 | 117 | 163 | 115 | 174 | 118 |

- (A) Same rates apply from: Holyoke, Mass.
 (B) Same rates apply from: New Britain, Conn.
 (C) Same rates apply from: Bridgeport, Meriden, and Wallingford, Conn.
 (D) Same rates apply from: Clinton, Mass.
 (E) Same rates apply from: So. Norwalk, Conn.
 (F) Same rates apply from: Cabot and So. Braintree, Mass.
 (G) Same rates apply from: E. Providence, Fox Point, Harbor Point, Pawtucket, So. Providence and Bristol, Rhode Island.
 (H) Same rates apply from: Fall River, New Bedford and Wapuppa, Mass.

| | |
|--------------------------------|----------------|
| INTERSTATE COMMERCE COMMISSION | |
| 145 7131 | Exhibit No. 32 |
| Docket No. | |
| Witness: <i>H. H. Coyle</i> | |
| (Complainant's) | |
| (Applicant's) | |
| Date | 10-22-57 |
| (Intervener's Reporter) | <i>at</i> |

I&S Docket No. 7131
Witness: H. H. Coyle

Sheet 2 of 2 Sheets

PER CENT REVENUE OF COSTS ON ST. LOUIS RATES

| TO ST. LOUIS AND EAST ST. LOUIS FROM N.H.R.R. STATIONS | 20 000 lbs. | | | | 30 000 lbs. | | | | 40 000 lbs. | | 50 000 lbs. | | 60 000 lbs. | | 70 000 lbs. | |
|--|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|-------------|-----|
| | 20 000 Rate | | 40 000 Rate | | 30 000 Rate | | 40 000 Rate | | OP | FD | OP | FD | OP | FD | OP | FD |
| | OP | FD | OP | FD | OP | FD | OP | FD | | | | | | | | |
| Stanford, Conn. (A) | 143 | 122 | 159 | 136 | 147 | 119 | 151 | 122 | 145 | 111 | 156 | 114 | 160 | 113 | 171 | 116 |
| Springfield, Mass. (B) | 143 | 122 | 158 | 136 | 147 | 119 | 151 | 122 | 145 | 111 | 156 | 114 | 160 | 113 | 171 | 116 |
| Waterbury, Conn. | 142 | 121 | 158 | 135 | 146 | 118 | 150 | 121 | 144 | 110 | 155 | 113 | 159 | 112 | 170 | 115 |
| Hartford, Conn. (C) | 143 | 122 | 159 | 136 | 148 | 119 | 152 | 122 | 145 | 111 | 157 | 114 | 160 | 112 | 171 | 116 |
| New Haven, Conn. (D) | 141 | 121 | 157 | 134 | 146 | 118 | 150 | 121 | 143 | 110 | 155 | 113 | 158 | 111 | 169 | 114 |
| Fitchburg, Mass. (E) | 141 | 121 | 157 | 134 | 146 | 118 | 150 | 121 | 143 | 110 | 154 | 113 | 158 | 111 | 169 | 114 |
| Willimantic, Conn. | 142 | 121 | 158 | 135 | 147 | 118 | 151 | 122 | 145 | 110 | 155 | 113 | 158 | 111 | 169 | 114 |
| Worcester, Mass. | 142 | 121 | 158 | 135 | 147 | 118 | 151 | 121 | 144 | 110 | 155 | 113 | 158 | 111 | 169 | 114 |
| New London, Conn. | 141 | 121 | 157 | 134 | 146 | 118 | 150 | 120 | 143 | 110 | 155 | 113 | 159 | 111 | 170 | 115 |
| Boston, Mass. (F) | 140 | 119 | 155 | 132 | 145 | 116 | 149 | 119 | 142 | 108 | 153 | 112 | 157 | 110 | 168 | 113 |
| Providence, R.I. (G) | 142 | 121 | 157 | 134 | 147 | 118 | 150 | 120 | 143 | 109 | 155 | 113 | 158 | 111 | 169 | 114 |
| Taunton, Mass. (H) | 141 | 120 | 156 | 133 | 146 | 117 | 149 | 120 | 142 | 109 | 154 | 112 | 156 | 110 | 167 | 113 |

- (A) Same rates apply from: So. Norwalk, Conn.
 (B) Same rates apply from: Holyoke, Mass.
 (C) Same rates apply from: New Britain, Conn.
 (D) Same rates apply from: Bridgeport, Meriden and Wallingford, Conn.
 (E) Same rates apply from: Clinton, Mass.
 (F) Same rates apply from: Cabot and So. Braintree, Mass.
 (G) Same rates apply from: E. Providence, Fox Point, Harbor Point, Pawtucket, So. Providence and Bristol, Rhode Island.
 (H) Same rates apply from: Fall River, New Bedford and Watuppa, Mass.

[fol. 845]

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 33

WITNESS: GILBERT J. PARR

BEFORE THE
INTERSTATE COMMERCE COMMISSIONI. & S. DOCKET NO. 7131
ALL COMMODITIES - FROM NEW ENGLAND TO
CHICAGO & ST. LOUISCOMPARISON OF RAIL RATES WITH COSTS FOR THE MOVEMENT
OF ALL COMMODITIES IN STRAIGHT OR MIXED CARLOADS FROM
SELECTED NEW ENGLAND POINTS TO CHICAGO AND ST. LOUIS

Washington, D. C.,

October 27, 1959

Eastern Central Motor

Carriers Association, Inc.

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TABLE 1

COMPARISON OF ALL-COMMODITY RATES UNDER INVESTIGATION WITH OUT-OF-POCKET AND FULLY DISTRIBUTED COSTS FOR MOVEMENTS FROM SELECTED ORIGIN POINTS TO CHICAGO, ILL. AND E. ST. LOUIS, ILL. COSTS BASED ON EASTERN DISTRICT BOX CAR COSTS FOR YEAR 1957 ADJUSTED TO REFLECT WAGE & PRICE LEVELS AS OF JUNE 1, 1959. SHIPMENTS LOADED IN ONE BOX CAR.

| Origin & Minimum Weight | Short Line Miles | Rate Per Cwt. | Cost Per Cwt. | | Ratio-Rate To Cost (%) | |
|-----------------------------------|---------------------|------------------|---------------|-------------|------------------------|-------------|
| | | | Out-Of-Pocket | Fully Dist. | Out-Of-Pocket | Fully Dist. |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| <u>MOVEMENTS TO CHICAGO, ILL.</u> | | | | | | |
| <u>BOSTON, MASS.</u> | | | | | | |
| 20 M | 973 | 213¢ | 161.9¢ | 187.7¢ | 132 | 113 |
| 30 M | " | 154 | 115.6 | 141.5 | 133 | 109 |
| 40 M | " | 118 | 92.5 | 118.3 | 128 | 100 |
| 50 M | " | 106 | 78.6 | 104.5 | 135 | 101 |
| 60 M | " | 95 | 69.4 | 95.2 | 137 | 100 |
| 70 M | " | 90 | 62.8 | 88.6 | 143 | 102 |
| <u>NEW HAVEN, CONN.</u> | | | | | | |
| 20 M | 921 | 207 | 155.5 | 180.1 | 133 | 115 |
| 30 M | " | 150 | 111.1 | 135.8 | 135 | 100 |
| 40 M | " | 115 | 88.9 | 113.6 | 129 | 101 |
| 50 M | " | 104 | 75.6 | 100.3 | 138 | 104 |
| 60 M | " | 92 | 66.8 | 91.4 | 138 | 101 |
| 70 M | " | 87 | 60.5 | 85.1 | 144 | 102 |
| <u>PROVIDENCE, R. I.</u> | | | | | | |
| 20 M | 978 | 216 | 162.5 | 188.5 | 133 | 115 |
| 30 M | " | 156 | 116.1 | 142.0 | 134 | 110 |
| 40 M | " | 120 | 92.8 | 118.8 | 129 | 101 |
| 50 M | " | 108 | 78.9 | 104.9 | 137 | 103 |
| 60 M | " | 96 | 69.6 | 95.6 | 138 | 100 |
| 70 M | " | 91 | 63.0 | 89.0 | 144 | 102 |
| <u>SPRINGFIELD, MASS.</u> | | | | | | |
| 20 M | 889 | 204 | 151.5 | 175.4 | 135 | 116 |
| 30 M | " | 147 | 108.3 | 132.3 | 136 | 111 |
| 40 M | " | 113 | 86.7 | 110.6 | 130 | 102 |
| 50 M | " | 102 | 73.8 | 97.7 | 138 | 104 |
| 60 M | " | 91 | 65.2 | 89.1 | 140 | 102 |
| 70 M | " | 86 | 59.0 | 82.9 | 146 | 104 |

Source of Unit Costs: Table 3 Hereto.

TABLE 1

Sheet 2 of 2

COMPARISON OF ALL-COMMODITY RATES UNDER INVESTIGATION WITH OUT-OF-POCKET AND FULLY DISTRIBUTED COSTS FOR MOVEMENTS FROM SELECTED ORIGIN POINTS TO CHICAGO, ILL. AND E. ST. LOUIS, ILL. COSTS BASED ON EASTERN DISTRICT BOX CAR COSTS FOR YEAR 1957 ADJUSTED TO REFLECT WAGE & PRICE LEVELS AS OF JUNE 1, 1959. SHIPMENTS LOADED IN ONE BOX CAR.

| Origin & Minimum Weight | Short Line Miles | Rate Per Cwt. | Cost Per Cwt. | | Ratio-Rate To Cost (%) | |
|--|---------------------|------------------|---------------|-------------|------------------------|-------------|
| | | | Out-Of-Pocket | Fully Dist. | Out-Of-Pocket | Fully Dist. |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| <u>MOVEMENTS TO E. ST. LOUIS, ILL.</u> | | | | | | |
| <u>ANDOVER, MASS.</u> | | | | | | |
| 20 M | 1174 | 238¢ | 186.7¢ | 217.2¢ | 127 | 110 |
| 30 M | " | 172 | 133.1 | 163.5 | 129 | 105 |
| 40 M | " | 132 | 106.2 | 136.7 | 124 | 97 |
| 50 M | " | 119 | 90.2 | 120.6 | 132 | 99 |
| 60 M | " | 106 | 79.4 | 109.9 | 134 | 96 |
| 70 M | " | 101 | 71.8 | 102.2 | 141 | 99 |
| <u>AVENUE, CONN.</u> | | | | | | |
| 20 M | 1122 | 232 | 180.3 | 209.6 | 129 | 111 |
| 30 M | " | 168 | 128.6 | 157.8 | 131 | 106 |
| 40 M | " | 129 | 102.7 | 131.9 | 126 | 98 |
| 50 M | " | 116 | 87.2 | 116.4 | 133 | 100 |
| 60 M | " | 103 | 76.8 | 106.1 | 134 | 97 |
| 70 M | " | 98 | 69.5 | 98.7 | 141 | 99 |
| <u>DENVER, R. I.</u> | | | | | | |
| 20 M | 1179 | 242 | 187.3 | 217.9 | 129 | 111 |
| 30 M | " | 175 | 133.5 | 164.1 | 131 | 107 |
| 40 M | " | 134 | 106.6 | 137.1 | 126 | 98 |
| 50 M | " | 121 | 90.5 | 121.0 | 134 | 100 |
| 60 M | " | 107 | 79.7 | 110.3 | 134 | 97 |
| 70 M | " | 102 | 72.0 | 102.6 | 142 | 99 |
| <u>FIELD, MASS.</u> | | | | | | |
| 20 M | 1089 | 229 | 176.2 | 204.7 | 130 | 112 |
| 30 M | " | 165 | 125.7 | 154.2 | 131 | 107 |
| 40 M | " | 127 | 100.4 | 128.9 | 126 | 99 |
| 50 M | " | 114 | 85.3 | 113.8 | 134 | 100 |
| 60 M | " | 102 | 75.2 | 103.7 | 136 | 98 |
| 70 M | " | 97 | 68.0 | 96.5 | 143 | 101 |

of Unit Costs: Table 3 Hereto.

TABLE 2

Sheet 1 of 2

COMPARISON OF ALL-COMMODITY RATES UNDER INVESTIGATION, WITH OUT-OF-POCKET AND FULLY DISTRIBUTED COSTS FOR MOVEMENTS FROM SELECTED ORIGIN POINTS TO CHICAGO, ILL. AND E. ST. LOUIS, ILL. COSTS BASED ON EASTERN DISTRICT BOX CAR COSTS FOR YEAR 1957 ADJUSTED TO REFLECT WAGE & PRICE LEVELS AS OF JUNE 1, 1959. SHIPMENTS LOADED IN TWO BOX CARS.

| In & m Weight | Short Line Miles | Rate Per Cwt. | Cost Per Cwt. | | Ratio-Rate To Cost (%) | |
|-----------------------------------|---------------------|------------------|---------------|-------------|------------------------|-------------|
| | | | Out-Of-Pocket | Fully Dist. | Out-Of-Pocket | Fully Dist. |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| <u>MOVEMENTS TO CHICAGO, ILL.</u> | | | | | | |
| <u>MASS.</u> | | | | | | |
| 20 M | 973 | 213¢ | 295.2¢ | 321.1¢ | 72 | 66 |
| 30 M | " | 154 | 204.5 | 230.4 | 75 | 67 |
| 40 M | " | 118 | 159.1 | 184.9 | 74 | 64 |
| 50 M | " | 106 | 131.9 | 157.8 | 80 | 67 |
| 60 M | " | 95 | 113.7 | 139.6 | 84 | 68 |
| 70 M | " | 90 | 100.8 | 126.7 | 89 | 71 |
| <u>AVEN, CONN.</u> | | | | | | |
| 20 M | 921 | 207 | 283.1 | 307.7 | 73 | 67 |
| 30 M | " | 150 | 196.2 | 220.9 | 76 | 68 |
| 40 M | " | 115 | 152.7 | 177.3 | 75 | 65 |
| 50 M | " | 104 | 126.7 | 151.3 | 82 | 69 |
| 60 M | " | 92 | 109.2 | 133.9 | 84 | 69 |
| 70 M | " | 87 | 96.9 | 121.5 | 90 | 72 |
| <u>DENCE, R. I.</u> | | | | | | |
| 20 M | 978 | 216 | 296.4 | 322.4 | 73 | 67 |
| 30 M | " | 156 | 205.3 | 231.3 | 76 | 67 |
| 40 M | " | 120 | 159.7 | 185.7 | 75 | 65 |
| 50 M | " | 108 | 132.4 | 158.4 | 82 | 68 |
| 60 M | " | 96 | 114.2 | 140.1 | 84 | 69 |
| 70 M | " | 91 | 101.2 | 127.2 | 90 | 72 |
| <u>FIELD, MASS.</u> | | | | | | |
| 20 M | 889 | 204 | 275.6 | 299.5 | 74 | 68 |
| 30 M | " | 147 | 191.1 | 215.0 | 77 | 68 |
| 40 M | " | 113 | 148.7 | 172.6 | 76 | 65 |
| 50 M | " | 102 | 123.4 | 147.3 | 83 | 69 |
| 60 M | " | 91 | 106.4 | 130.4 | 86 | 70 |
| 70 M | " | 86 | 94.4 | 118.3 | 91 | 73 |

e of Unit Costs - Table 3 Hereto.

TABLE 2

COMPARISON OF ALL-COMMODITY RATES UNDER INVESTIGATION WITH OUT-OF-POCKET AND FULLY DISTRIBUTED COSTS FOR MOVEMENTS FROM SELECTED ORIGIN POINTS TO CHICAGO, ILL. AND E. ST. LOUIS, ILL. COSTS BASED ON EASTERN DISTRICT BOX CAR COSTS FOR YEAR 1957 ADJUSTED TO REFLECT WAGE & PRICE LEVELS AS OF JUNE 1, 1959. SHIPMENTS LOADED IN TWO BOX CARS.

| Origin & Minimum Weight | Short Line Miles | Rate Per Cwt. | Cost Per Cwt. | | Ratio-Rate To Cost (%) | |
|--|---------------------|------------------|---------------|-------------|------------------------|-------------|
| | | | Out-Of-Pocket | Fully Dist. | Out-Of-Pocket | Fully Dist. |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| <u>MOVEMENTS TO E. ST. LOUIS, ILL.</u> | | | | | | |
| <u>BOSTON, MASS.</u> | | | | | | |
| 20 M | 1174 | 238¢ | 342.2¢ | 372.7¢ | 70 | 64 |
| 30 M | " | 172 | 236.8 | 267.2 | 73 | 64 |
| 40 M | " | 132 | 183.9 | 214.4 | 72 | 62 |
| 50 M | " | 119 | 152.3 | 182.8 | 78 | 65 |
| 60 M | " | 106 | 131.2 | 161.6 | 81 | 66 |
| 70 M | " | 101 | 116.2 | 146.6 | 87 | 69 |
| <u>NEW HAVEN, CONN.</u> | | | | | | |
| 20 M | 1122 | 232 | 330.1 | 359.3 | 70 | 65 |
| 30 M | " | 168 | 228.4 | 257.7 | 74 | 65 |
| 40 M | " | 129 | 177.5 | 206.8 | 73 | 62 |
| 50 M | " | 116 | 147.1 | 176.3 | 79 | 66 |
| 60 M | " | 103 | 126.7 | 155.9 | 81 | 66 |
| 70 M | " | 98 | 112.2 | 141.4 | 87 | 69 |
| <u>PROVIDENCE, R. I.</u> | | | | | | |
| 20 M | 1179 | 242 | 343.4 | 374.0 | 70 | 65 |
| 30 M | " | 175 | 237.6 | 268.1 | 74 | 65 |
| 40 M | " | 134 | 184.5 | 215.1 | 73 | 62 |
| 50 M | " | 121 | 152.8 | 183.4 | 79 | 66 |
| 60 M | " | 107 | 131.6 | 162.2 | 81 | 66 |
| 70 M | " | 102 | 116.5 | 147.1 | 88 | 69 |
| <u>SPRINGFIELD, MASS.</u> | | | | | | |
| 20 M | 1089 | 229 | 322.4 | 350.9 | 71 | 65 |
| 30 M | " | 165 | 223.1 | 251.6 | 74 | 66 |
| 40 M | " | 127 | 173.4 | 201.9 | 73 | 63 |
| 50 M | " | 114 | 143.7 | 172.2 | 79 | 66 |
| 60 M | " | 102 | 123.8 | 152.3 | 82 | 67 |
| 70 M | " | 97 | 109.7 | 138.2 | 88 | 70 |

Source of Unit Costs-- Table 3 Hereto.

TABLE 3

[fol. 851]

DEVELOPMENT OF UNIT COSTS APPLICABLE TO MOVEMENT OF BOX CAR
TRAFFIC FROM POINTS IN NEW ENGLAND TO CHICAGO & E. ST. LOUIS,
ILL. COSTS BASED ON EASTERN DIST. UNIT COSTS FOR YEAR 1957
ADJUSTED TO LEVEL AS OF JUNE 1, 1959.

| Line No. | Item (1) | Source ^{1/} (2) | One Car Per Shipment (3) | Two Cars Per Shipment (4) |
|--|--|--------------------------------|-----------------------------------|------------------------------------|
| OUT-OF-POCKET COST | | | | |
| TERMINAL COSTS - ORIGIN & DEST. (Cents) | | | | |
| 1. | Switching & Freight Car Exp. | Sum. 1, Sh. 1, 6/, L. 3 + L. 5 | 4,967.755 | 9,935.510 |
| 2. | Special Services Exp. | Sch. G, Sh. 1, L. 36 | 234.906 | 469.812 |
| 3. | Station Clerical Exp. | " " L. 35 | 1,121.532 ^{2/} | 1,121.532 |
| 4. | Total Carload Expense | Lines 1, 2, 3 | 6,324.193 | 11,526.854 |
| 5. | Cost Per Cwt. | Sum. 1, Sh. 1, L. 25 | 1.365 | 1.365 |
| 6. | Loss & Damage Claim Exp. Per Cwt. State. | 5-58, App. A, L. 38 | 8.747 | 8.747 |
| 7. | Total Cost Per C. | | | |
| a. | 20 M Min. Wt. (Lbs.) | (L. 4 ÷ 200) + L. 5 + L. 6 | 41.7 | 67.8 |
| b. | 30 M " " " | (" ÷ 300) + " + " | 31.2 | 48.6 |
| c. | 40 M " " " | (" ÷ 400) + " + " | 25.9 | 38.9 |
| d. | 50 M " " " | (" ÷ 500) + " + " | 22.8 | 33.2 |
| e. | 60 M " " " | (" ÷ 600) + " + " | 20.7 | 29.3 |
| f. | 70 M " " " | (" ÷ 700) + " + " | 19.2 | 26.6 |
| LINE HAUL COSTS - (THRU TRAINS) | | | | |
| 8. | Car-Mile Cost Incl. Interchange Exp. | Sum. 1, Sh. 1, L. 15 | 19.51088 | 39.02176 |
| 9. | Cwt-Mile Cost | Sum. 1, Sh. 1, L. 12 ÷ 20 | .01176 | .01176 |
| 10. | Car-Mile Cost Incr. For 13% Circuitry | L. 8 x 1.13 | 22.04729 | 44.09459 |
| 11. | Cwt-Mile Cost Incr. For 13% Circuitry | L. 9 x 1.13 | .01329 | .01329 |
| 12. | Total Cost Per Cwt-Mile | | | |
| a. | 20 M Min. Wt. (Lbs.) | (L. 10 ÷ 200) + L. 11 | .12353 | .23376 |
| b. | 30 M " " " | (" ÷ 300) + " | .08678 | .16027 |
| c. | 40 M " " " | (" ÷ 400) + " | .06841 | .12353 |
| d. | 50 M " " " | (" ÷ 500) + " | .03738 | .10148 |
| e. | 60 M " " " | (" ÷ 600) + " | .05004 | .08678 |
| f. | 70 M " " " | (" ÷ 700) + " | .04479 | .07628 |

See Sheet 2 For Footnotes

TABLE 3

DEVELOPMENT OF UNIT COSTS APPLICABLE TO MOVEMENT OF BOX CAR TRAFFIC FROM POINTS IN NEW ENGLAND TO CHICAGO & E. ST. LOUIS, ILL. COSTS BASED ON EASTERN DIST. UNIT COSTS FOR YEAR 1957 ADJUSTED TO LEVEL AS OF JUNE 1, 1959.

| Line No. | Item (1) | Source ^{1/} (2) | One Car Per Shipment (3) | Two Cars Per Shipment (4) |
|---------------------------------------|--|-----------------------------|-----------------------------------|------------------------------------|
| CONSTANT COST (Cents) | | | | |
| 13. | Terminal Cost Per Cwt. | Sum. 1, Sh. 1, L. 28 | 3.481 | 3.481 |
| 14. | Line Haul Cost Per Cwt-Mile | Sum. 1, Sh. 1, L. 26 + 20 | .02032 | .02032 |
| 15. | Cwt-Mile Cost Incr. For 13% Circuitry | L. 14 x 1.13 | .02296 | .02296 |
| FULLY DISTRIBUTED COST (Cents) | | | | |
| 16. | TERMINAL COST PER CWT. | | | |
| a. | 20 M Min. Wt. (Lbs.) | L. 13 + L. 7a | 45.2 | 71.3 |
| b. | 30 M " " " | " + L. 7b | 34.7 | 52.1 |
| c. | 40 M " " " | " + L. 7c | 29.4 | 42.4 |
| d. | 50 M " " " | " + L. 7d | 26.3 | 36.7 |
| e. | 60 M " " " | " + L. 7e | 24.2 | 32.8 |
| f. | 70 M " " " | " + L. 7f | 22.7 | 30.1 |
| 17. | LINE-HAUL COST PER CWT-MILE | | | |
| a. | 20 M Min. Wt. (Lbs.) | L. 15 + L. 12a | .14649 | .25672 |
| b. | 30 M " " " | " + L. 12b | .10974 | .18323 |
| c. | 40 M " " " | " + L. 12c | .09137 | .14649 |
| d. | 50 M " " " | " + L. 12d | .08034 | .12444 |
| e. | 60 M " " " | " + L. 12e | .07390 | .10974 |
| f. | 70 M " " " | " + L. 12f | .06775 | .09924 |

1/ References To Schedule G, and Summary 1 Are To I.C.C. Cost Finding Section Rail Form A Application Underlying Statement No. 5-58, With Further Adjustment To Wage & Price Level As Of June 1, 1959.

2/ Station Clerical Expense For Shipments Handled In Two Cars Is Treated As Equal To Expense For Shipments Handled In One Car. (See Explanatory Statement)

EXPLANATORY STATEMENT

General

The rail costs in this study are based on the Eastern District territorial average costs shown in a study prepared by the Cost Finding Section of the Interstate Commerce Commission, designated as Statement No. 5-58. Such costs, however, are adjusted to reflect wage and price levels as of June 1, 1959. The costs are shown in various net loads in box cars, assuming the traffic is handled in, both, one and two cars. The costs are shown for the movement in through trains and are based on the 28300 short line miles, increased for 13 per cent circuitry.

The intermediate switching expenses, i.e., the interchange and inter and intratrain switching costs are treated on a per car-mile basis.

The station clerical expense for the movement in two cars is computed by using the same clerical cost as developed for one car.

The loss and damage claim expense is based on the experience for Freight Forwarder traffic, Commodity Class No. 950.

Both the out-of-pocket and the fully distributed costs are shown. The out-of-pocket costs include 80 per cent of the total operating expenses, rents & taxes, plus a four per cent return on 100 per cent of the depreciated investment in equipment and 50 per cent of the depreciated investment in road property.

The fully distributed costs include, in addition to the out-of-pocket costs, the remaining 20 per cent of the operating expenses, rents and taxes, plus a four per cent return on the remaining 50 per cent of the investment in the road property plus passenger and l.c.l. deficits.

The distribution of the constant costs and the passenger and l.c.l. deficits is computed on a statistical ton and ton-mile basis. This basis results in apportioning the same amount to any one class of traffic as to any other class of traffic. It does not give any consideration to value of service or other noncost factors.

I. & S. DOCKET NO. 7131
ALL COMMODITIES - FROM NEW ENGLAND TO CHICAGO & ST. LOUIS

Revenue Bearing Characteristics of Traffic Handled in Official Territory
During 1957, and on New Haven Railroad During Year 1958

| Line No. | I T E M (1) | Products of Agriculture (2) | Animals & Products (3) | Products of Mines (4) | Products of Forests (5) | Manufactures & Miscellaneous (6) | Forwarded Traffic (7) | All Commodities (8) |
|--|---|--------------------------------|---------------------------|--------------------------|----------------------------|-------------------------------------|--------------------------|------------------------|
| <u>MOVEMENTS WITHIN OFFICIAL TERR. - 1957^{1/}</u> | | | | | | | | |
| 1. | Tons Terminated -- (Millions) | 34.4 | 2.8 | 444.2 | 6.1 | 163.3 | 1.2 | 652.0 |
| 2. | Revenue ----- (Millions) | \$ 191.6 | \$ 51.5 | \$1,328.4 | \$ 27.3 | \$1,246.5 | \$ 39.3 | \$2,884.6 |
| 3. | Contribution ----- (Millions) | \$ 37.3 | \$ 2.1 | \$ 224.8 | \$ 2.8 | \$ 480.2 | \$ 4.3 | \$ 751.5 |
| 4. | Ratio-Rev. to Out-of-Pocket Cost (%) | 124 | 104 | 120 | 111 | 163 | 112 | 135 |
| 5. | Ratio-Rev. to Fully Distrib. Cost (%) | 94 | 92 | 80 | 87 | 129 | 102 | 98 |
| 6. | Percent of Tons Terminated | 5.3 | .5 | 68.1 | .9 | 25.0 | .2 | 100.0 |
| 7. | Percent of Revenue | 6.6 | 1.8 | 46.1 | .9 | 43.2 | 1.4 | 100.0 |
| 8. | Percent of Contribution | 5.0 | .3 | 29.8 | .4 | 63.9 | .6 | 100.0 |
| <u>NEW HAVEN RR. - 1958^{2/}</u> | | | | | | | | |
| 9. | Total Tons Carried (Millions) | 1.9 | .6 | 5.1 | .8 | 10.8 | .3 | 19.5 |
| 10. | Revenue ----- (Millions) | \$ 6.8 | \$ 4.2 | \$ 10.9 | \$ 2.5 | \$ 50.4 | \$ 3.0 | \$ 77.8 |
| 11. | Contribution ^{3/} --- (Millions) | \$ 1.3 | \$.2 | \$ 1.8 | \$.2 | \$ 19.5 | \$.3 | \$ 23.3 |
| 12. | Percent of Tons Carried | 9.7 | 3.1 | 26.2 | 4.1 | 55.4 | 1.5 | 100.0 |
| 13. | Percent of Revenue | 8.7 | 5.4 | 14.0 | 3.2 | 64.8 | 3.9 | 100.0 |
| 14. | Percent of Contribution | 5.6 | .9 | 7.7 | .9 | 83.6 | 1.3 | 100.0 |

^{1/} From ICC Cost Finding Section Statement No. 2-59.

^{2/} From New Haven RR. Freight Commodity Statistics for Year 1958 (Form QCS).

^{3/} Based on territorial average relationship of revenue to ^{OUT-OF-POCKET} ~~fully distributed~~ cost from Line 4 hereto. (Line 10 minus Line 10 divided by ratio from Line 4). Amount in Column (8) is sum of Cols. (2) to (7).

I & S DOCKET NO. 7131

COMPARISON OF COST TO THE SHIPPER USING PLAN III SERVICE
WITH THE COST TO THE SHIPPER USING THE ALL ARTICLES RATES
UNDER INVESTIGATION.

Sheet 1 of 2

New Haven RR.

Proposed

Box Car

Rates

(3)

Plan III

T.O.F.C.

(2)

Line
No.

I T E M

(1)

1. Plan III Charge - Boston to Chicago
2. Plan III Charge - Boston to E. St. Louis
3. Trailer Rental Expense per Shipment 1/
4. P & D Cost per Cwt. (Orig. + Dest.) 2/
- a. 20,000 lb. Shipment (2 Trailers)
- b. 30,000 "
- c. 40,000 "
- d. 50,000 "
- e. 60,000 "
- f. 70,000 "

| | |
|----------|------|
| \$494.50 | xxxx |
| \$600.00 | xxxx |
| \$ 60.00 | xxxx |
| 6.9¢ | xxxx |
| 5.4¢ | xxxx |
| 4.4¢ | xxxx |
| 3.9¢ | xxxx |
| 3.0¢ | xxxx |
| 3.0¢ | xxxx |

TOTAL COST TO SHIPPER (per Cwt.)

Boston to Chicago

5. 20,000 lb. Shipment [L.4a + (L.1 + L.3) + 200]
6. 30,000 " [L.4b + " + 300]
7. 40,000 " [L.4c + " + 400]
8. 50,000 " [L.4d + " + 500]
9. 60,000 " [L.4e + " + 600]
10. 70,000 " [L.4f + " + 700]

| | |
|--------|--------|
| 284.2¢ | 213.0¢ |
| 190.2¢ | 154.0¢ |
| 143.0¢ | 118.0¢ |
| 114.8¢ | 106.0¢ |
| 95.4¢ | 95.0¢ |
| 82.2¢ | 90.0¢ |

Boston to E. St. Louis

11. 20,000 lb. Shipment [L.4a + (L.2 + L.3) + 200]
12. 30,000 " [L.4b + " + 300]
13. 40,000 " [L.4c + " + 400]
14. 50,000 " [L.4d + " + 500]
15. 60,000 " [L.4e + " + 600]
16. 70,000 " [L.4f + " + 700]

| | |
|--------|--------|
| 336.9¢ | 238.0¢ |
| 225.4¢ | 172.0¢ |
| 169.4¢ | 132.0¢ |
| 135.9¢ | 119.0¢ |
| 113.0¢ | 106.0¢ |
| 97.3¢ | 101.0¢ |

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 35

1/ Based on rental of \$7.50 per day for 2 trailers used for 4 days.

2/ See Sheet 2 hereto.

**COMPARISON OF COST TO THE SHIPPER USING PLAN III SERVICE
WITH THE COST TO THE SHIPPER USING THE ALL ARTICLES RATES
UNDER INVESTIGATION.**

Sheet 2 of 2

| Net Load per Trailer (1) | P & D Running Costs per Cwt. (Excl. Stop Costs) | | | |
|-----------------------------------|---|-------------------------------------|--------------------------------|-----------------------|
| | Origin New England (2) | Destination Central Terr. (3) | Total Origin + Dest. (4) | Col. (4) , 10% (5) |
| 10,000 lb. | 2.4¢ | 3.9¢ | 6.3¢ | 6.9¢ |
| 15,000 " | 1.9¢ | 3.0¢ | 4.9¢ | 5.4¢ |
| 20,000 " | 1.6¢ | 2.4¢ | 4.0¢ | 4.4¢ |
| 25,000 " | 1.4¢ | 2.1¢ | 3.5¢ | 3.9¢ |
| 30,000 " | 1.2¢ | 1.5¢ | 2.7¢ | 3.0¢ |
| 35,000 " | 1.2¢ | 1.5¢ | 2.7¢ | 3.0¢ |

SOURCE: Cost Finding Section Statements No. 3-57 and 3-58.

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[fol. 858]

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 36

I. & S. DOCKET NO. 7131
WITNESS _____

STATEMENT

SHOWING THE NEW YORK, NEW HAVEN AND HARTFORD PROPOSED
ALL ARTICLES RATES AND THEIR PER CENT OF THE 28300 APPLICABLE FIRST
CLASS RATE AS COMPARED TO THE PRESENT BOX-CAR ALL FREIGHT RATE.

| TO FROM | | Chicago, Illinois - Gibson, Indiana - Hammond, Indiana | | | | | | | | | | | | | | |
|--------------------------------|-----|--|---------------------|-----|---------------------|-----|---------------------|-----|---------------------|----|---------------------|----|---------------------|------|---|---------------------------|
| | | 28300 First Class Rate | *PROPOSED | | | | | | | | | | | | *PRESENT BOX CAR RATE 30,000# | % OF FIRST CLASS |
| | | | Rate | | Rate | | Rate | | Rate | | Rate | | Rate | | | |
| | | | Min. Wt. 20,000# | % | Min. Wt. 30,000# | % | Min. Wt. 40,000# | % | Min. Wt. 50,000# | % | Min. Wt. 60,000# | % | Min. Wt. 70,000# | % | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | |
| Ansonia.....Conn. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | E202 | 44.6 | |
| Armory.....Mass. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | F202 | 44.6 | |
| Blackstone.....Mass. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | G204 | 43.8 | |
| Boston.....Mass. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | 204 | 43.1 | |
| Bridgeport.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 202 | 43.9 | |
| Bristol.....Conn. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | H202 | 44.6 | |
| Bristol.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| Cabot.....Mass. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | 204 | 43.1 | |
| Clinton.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | I204 | 44.3 | |
| Clinton.....Mass. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 204 | 44.3 | |
| Cranston.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | J204 | 42.4 | |
| Darlington.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | K204 | 42.4 | |
| Derby-Shelton.....Conn. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | L202 | 44.6 | |
| East Providence Wharf.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| Fall River.....Mass. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| Fitchburg.....Mass. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 204 | 44.3 | |
| Fox Point.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| Georgetown.....Conn. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | M202 | 43.3 | |
| Groton.....Conn. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | N204 | 43.1 | |
| Harbor Jct. Wharf.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| Hartford.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 202 | 43.9 | |
| Holyoke.....Mass. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | A202 | 44.6 | |
| Leominster.....Mass. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | O204 | 44.3 | |
| Meriden.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 202 | 43.9 | |
| Maugatuck.....Conn. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | P202 | 44.6 | |
| New Bedford.....Mass. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| New Britain.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 202 | 43.9 | |
| New Haven.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 202 | 43.9 | |
| New London.....Conn. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | 204 | 43.1 | |
| Northampton.....Mass. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | 202 | 44.6 | |
| North Plymouth.....Mass. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | --- | ---- | |
| Norwalk.....Conn. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | Q202 | 43.3 | |
| Pawtucket.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | B204 | 42.4 | |
| Phillipsdale.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | R204 | 42.4 | |

| TO FROM | | Chicago, Illinois - Gibson, Indiana - Hammond, Indiana | | | | | | | | | | | | | | |
|---------------------------|-----|--|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|----|-----------------------------|----|-----------------------------|------------------------------|---|---------------------------|
| | | 28300 First Class Rate | *PROPOSED | | | | | | | | | | | | *PRESENT BOX CAR RATE 30,000# | % OF FIRST CLASS |
| | | | Rate Min. Wt. 20,000# | | Rate Min. Wt. 30,000# | | Rate Min. Wt. 40,000# | | Rate Min. Wt. 50,000# | | Rate Min. Wt. 60,000# | | Rate Min. Wt. 70,000# | | | |
| | | | % | % | % | % | % | % | % | % | % | % | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | |
| Pittsfield.....Mass. | 439 | 198 | 45.1 | 143 | 32.6 | 110 | 25.1 | 99 | 22.6 | 88 | 20.0 | 83 | 18.9 | { W190 202 204 S204 | 43.3 | |
| Providence.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | | 46.0 | |
| Saylesville.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | | 42.4 | |
| South Braintree.....Mass. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | | 42.4 | |
| South Norwalk.....Conn. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | 204 | 43.1 | |
| South Providence.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 202 | 43.3 | |
| Springfield.....Mass. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | 202 | 44.6 | |
| Stamford.....Conn. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | 202 | 43.3 | |
| Torrington.....Conn. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | --- | ---- | |
| Wallingford.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | 202 | 43.9 | |
| Walpole.....Mass. | 473 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | C204 | 43.1 | |
| Waterbury.....Conn. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | 202 | 44.6 | |
| Watuppa.....Mass. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | 204 | 42.4 | |
| Webster.....Mass. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | T204 | 43.8 | |
| Westfield.....Mass. | 453 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | 202 | 44.6 | |
| West Haven.....Conn. | 460 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | U202 | 43.9 | |
| Willimantic.....Conn. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | D204 | 43.8 | |
| Woonsocket.....R.I. | 481 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 | V204 | 42.4 | |
| Worcester.....Mass. | 466 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | 204 | 43.8 | |

| TO FROM | | East St. Louis, Illinois and St. Louis, Missouri | | | | | | | | | | | | | |
|------------------------------|-----|--|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|--|---------------------------|
| | | 28300 First Class Rate | * PROPOSED | | | | | | | | | | | PRESENT BOX CAR RATE 30,000# | % OF FIRST CLASS |
| | | | Rate Min. Wt. 20,000# | % | Rate Min. Wt. 30,000# | % | Rate Min. Wt. 40,000# | % | Rate Min. Wt. 50,000# | % | Rate Min. Wt. 60,000# | % | Rate Min. Wt. 70,000# | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| Ansonia.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | E225 | 44.3 |
| Armory.....Mass. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | F225 | 44.3 |
| Blackstone.....Mass. | 522 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 | G233 | 44.6 |
| Boston.....Mass. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | 233 | 44.0 |
| Bridgeport.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 225 | 43.6 |
| Bristol.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | H225 | 44.3 |
| Bristol.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 |
| Cabot.....Mass. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | 233 | 44.0 |
| Clinton.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | I233 | 45.2 |
| Clinton.....Mass. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 233 | 45.2 |
| Cranston.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | J233 | 43.4 |
| Darlington.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | K233 | 43.4 |
| Derby-Shelton.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | L225 | 44.3 |
| East Providence Wharf...R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 |
| Fall River.....Mass. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 |
| Fitchburg.....Mass. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 233 | 45.2 |
| Fox Point.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 |
| Georgetown.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | M225 | 44.3 |
| Groton.....Conn. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | N233 | 44.0 |
| Harbor Jct. Wharf.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 |
| Hartford.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 225 | 43.6 |
| Holyoke.....Mass. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | A225 | 44.3 |
| Leominster.....Mass. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | O233 | 45.2 |
| Meriden.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 225 | 43.6 |
| Maugatuck.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | P225 | 44.3 |
| New Bedford.....Mass. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 |
| New Britain.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 225 | 43.6 |
| New Haven.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 225 | 43.6 |
| New London.....Conn. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | 233 | 44.0 |
| Northampton.....Mass. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 |
| North Plymouth.....Mass. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | --- | ---- |
| Norwalk.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | Q225 | 44.3 |
| Pawtucket.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | B233 | 43.4 |
| Phillipsdale.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | R233 | 43.4 |

| TO FROM | | East St. Louis, Illinois and St. Louis, Missouri | | | | | | | | | | | | | | |
|---------------------------|-----|--|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|-----|-----------------------------|--------------|-------------------------------|---------------------------|
| | | # 28300 First Class Rate | *PROPOSED | | | | | | | | | | | | *PRESENT | % OF FIRST CLASS |
| | | | Rate Min. Wt. 20,000# | % | Rate Min. Wt. 30,000# | % | Rate Min. Wt. 40,000# | % | Rate Min. Wt. 50,000# | % | Rate Min. Wt. 60,000# | % | Rate Min. Wt. 70,000# | % | BOX CAR RATE 30,000# | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | |
| Pittsfield.....Mass. | 494 | 221 | 44.7 | 160 | 32.4 | 123 | 24.9 | 111 | 22.5 | 98 | 19.8 | 93 | 18.8 | {W220 225 | 44.5 45.5 | |
| Providence.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 | |
| Saylesville.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | S233 | 43.4 | |
| South Braintree.....Mass. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | 233 | 44.0 | |
| South Norwalk.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 | |
| South Providence.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 | |
| Springfield.....Mass. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 | |
| Stamford.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 | |
| Torrington.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | --- | --- | |
| Wallingford.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | 225 | 43.6 | |
| Walpole.....Mass. | 529 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 | C233 | 44.0 | |
| Waterbury.....Conn. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 | |
| Watuppa.....Mass. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | 233 | 43.4 | |
| Webster.....Mass. | 522 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 | T233 | 44.6 | |
| Westfield.....Mass. | 508 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 | 225 | 44.3 | |
| West Haven.....Conn. | 516 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 | U225 | 43.6 | |
| Willimantic.....Conn. | 522 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 | D233 | 44.6 | |
| Woonsocket.....R.I. | 537 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 | V233 | 43.4 | |
| Worcester.....Mass. | 522 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 | 233 | 44.6 | |

TARIFF AUTHORITY:

- # - Rail 28300 first class rates per The Central Territory Railroads Tariff Bureau Tariff E-1009, I.C.C. No. 4487, H. R. Hinsch, Tariff Publishing Officer.
- * - Proposed All Articles rates per Section 2 of The New York, New Haven and Hartford Railroad Company Tariff I.C.C. No. F-4501.
- † - Present rail boxcar all-freight rates per Section 1 of The New York, New Haven and Hartford Railroad Company Tariff I.C.C. No. F-4501.

INTERMEDIATE APPLICATION:

- A - Holyoke, Mass., intermediate from Northampton, Mass., via The New York, New Haven and Hartford Railroad Company.
- B - Pawtucket, R.I., intermediate from Boston, Mass., via The New York, New Haven and Hartford Railroad Company.
- C - Walpole, Mass., intermediate from Boston, Mass., via The New York, New Haven and Hartford Railroad Company.
- D - Willimantic, Conn., intermediate from Worcester, Mass., via The New York, New Haven and Hartford Railroad Company.

IMMEDIATE APPLICATION: (Concluded)

Ansonia, Conn., intermediate from Waterbury, Conn., via The New York, New Haven and Hartford Railroad Company.
Arroy, Mass., intermediate from Springfield, Mass., via The New York, New Haven and Hartford Railroad Company.
Blackstone, Mass., intermediate from Worcester, Mass., via The New York, New Haven and Hartford Railroad Company.
Bristol, Conn., intermediate from New Britain, Conn., via The New York, New Haven and Hartford Railroad Company.
Clinton, Conn., intermediate from New London, Conn., via The New York, New Haven and Hartford Railroad Company.
Cranston, R.I., intermediate from Providence, R.I., via The New York, New Haven and Hartford Railroad Company.
Dartington, R.I., intermediate from Boston, Mass., via The New York, New Haven and Hartford Railroad Company.
Derby-Shelton, Conn., intermediate from Waterbury, Conn., via The New York, New Haven and Hartford Railroad Company.
Georgetown, Conn., intermediate from Waterbury, Conn., via The New York, New Haven and Hartford Railroad Company.
Groton, Conn., intermediate from Providence, R.I., via The New York, New Haven and Hartford Railroad Company.
Leominster, Mass., intermediate from Fitchburg, Mass., via The New York, New Haven and Hartford Railroad Company.
Middletown, Conn., intermediate from Waterbury, Conn., via The New York, New Haven and Hartford Railroad Company.
Norwalk, Conn., intermediate from Bridgeport, Conn., via The New York, New Haven and Hartford Railroad Company.
Phillipsdale, R.I., intermediate from Boston, Mass., via The New York, New Haven and Hartford Railroad Company.
Stilesville, R.I., intermediate from Boston, Mass., via The New York, New Haven and Hartford Railroad Company.
Webster, Mass., intermediate from Worcester, Mass., via The New York, New Haven and Hartford Railroad Company.
West Haven, Conn., intermediate from New Haven, Conn., via The New York, New Haven and Hartford Railroad Company.
Woonsocket, R.I., intermediate from Worcester, Mass., via The New York, New Haven and Hartford Railroad Company.
Applies only via routes operating via Campbell Hall or Maybrook, N.Y.

BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 37

226³⁴
[fol. 864]

I. & S. DOCKET NO. 7131
WITNESS

STATEMENT

SHOWING A COMPARISON OF THE RAIL 28300 CLASS RATES FROM AND TO
THE POINTS INVOLVED WITH THE PROPOSED ALL ARTICLES RATES.

| FROM | TO | A. PRESENT RAIL 28300 CLASS RATES | | | | | | | | | | | | | B. PROPOSED ALL ARTICLES RATES | | | | | |
|---------------------------|-------------------|-----------------------------------|-----|-----|-----|-----|-----|------|-----|------|-----|------|-----|--------|--------------------------------|--------|--------|--------|--------|--|
| | | C L A S S E S | | | | | | | | | | | | | RATE, MINIMUM WEIGHT | | | | | |
| | | 100 | 85 | 70 | 55 | 50 | 40 | 37.5 | 35 | 32.5 | 30 | 27.5 | 25 | 20,000 | 30,000 | 40,000 | 50,000 | 60,000 | 70,000 | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | |
| Ansonia.....Conn. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 | |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 | |
| Armory.....Mass. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 | |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 | |
| Blackstone.....Mass. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 | |
| | St. Louis.....Mo. | 522 | 444 | 365 | 288 | 261 | 209 | 196 | 183 | 169 | 157 | 144 | 131 | 235 | 170 | 131 | 117 | 104 | 99 | |
| Boston.....Mass. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 | |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 | |
| Bridgeport.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 | |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 | |
| Bristol.....Conn. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 | |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 | |
| Bristol.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 | |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 | |
| Cabot.....Mass. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 | |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 | |
| Clinton.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 | |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 | |
| Clinton.....Mass. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 | |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 | |
| Cranston.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 | |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 | |
| Darlington.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 | |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 | |
| Derby-Shelton.....Conn. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 | |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 | |
| E. Providence Wharf..R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 | |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 | |
| Fall River.....Mass. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 | |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 | |
| Fitchburg.....Mass. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 | |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 | |
| Fox Point.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 | |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 | |
| Georgetown.....Conn. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 | |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 | |

| FROM | TO | A. PRESENT RAIL 28300 CLASS RATE | | | | | | | | | | | | B. PROPOSED ALL ARTICLES RATES | | | | | |
|---------------------------|-------------------|----------------------------------|-----|-----|-----|-----|-----|------|-----|------|-----|------|-----|--------------------------------|--------|--------|--------|--------|--------|
| | | C L A S S E S | | | | | | | | | | | | RATE, MINIMUM WEIGHT | | | | | |
| | | 100 | 85 | 70 | 55 | 50 | 40 | 37.5 | 35 | 32.5 | 30 | 27.5 | 25 | 20,000 | 30,000 | 40,000 | 50,000 | 60,000 | 70,000 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| Groton.....Conn. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 |
| Harbor Jet. Wharf...Conn. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| Hartford.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| Holyoke.....Mass. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| Leominster.....Mass. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| Meriden.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| Naugatuck.....Conn. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 81 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| New Bedford.....Mass. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| New Britain.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| New Haven.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| New London.....Conn. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 |
| Northampton.....Mass. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| North Plymouth.....Mass. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 |
| Norwalk.....Conn. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| Pawtucket.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| Phillipsdale.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| Pittsfield.....Mass. | Chicago.....Ill. | 439 | 373 | 307 | 242 | 219 | 175 | 164 | 154 | 143 | 132 | 120 | 110 | 198 | 143 | 110 | 99 | 88 | 83 |
| | St. Louis.....Mo. | 494 | 419 | 346 | 271 | 247 | 198 | 186 | 172 | 160 | 148 | 136 | 123 | 221 | 160 | 123 | 111 | 98 | 93 |
| Providence.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |

| FROM | TO | A. PRESENT RAIL 28300 CLASS RATE | | | | | | | | | | | | B. PROPOSED ALL ARTICLES RATES | | | | | |
|---------------------------|-------------------|----------------------------------|-----|-----|-----|-----|-----|------|-----|------|-----|------|-----|--------------------------------|--------|--------|--------|--------|--------|
| | | C L A S S E S | | | | | | | | | | | | RATE, MINIMUM WEIGHT | | | | | |
| | | 100 | 85 | 70 | 55 | 50 | 40 | 37.5 | 35 | 32.5 | 30 | 27.5 | 25 | 20,000 | 30,000 | 40,000 | 50,000 | 60,000 | 70,000 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| Saylesville.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| South Braintree.....Mass. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 |
| South Norwalk.....Conn. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| South Providence.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| Springfield.....Mass. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| Stamford.....Conn. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| Torrington.....Conn. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| Wallingford.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 253 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| Walpole.....Mass. | Chicago.....Ill. | 473 | 402 | 332 | 260 | 238 | 189 | 179 | 165 | 155 | 142 | 131 | 118 | 213 | 154 | 118 | 106 | 95 | 90 |
| | St. Louis.....Mo. | 529 | 450 | 370 | 290 | 265 | 212 | 199 | 185 | 173 | 159 | 146 | 133 | 238 | 172 | 132 | 119 | 106 | 101 |
| Waterbury.....Conn. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| Watuppa.....Mass. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| Webster.....Mass. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 522 | 444 | 365 | 288 | 261 | 209 | 196 | 183 | 169 | 157 | 144 | 131 | 229 | 165 | 127 | 114 | 102 | 97 |
| Westfield.....Mass. | Chicago.....Ill. | 453 | 373 | 317 | 249 | 226 | 182 | 170 | 158 | 147 | 136 | 124 | 113 | 204 | 147 | 113 | 102 | 91 | 86 |
| | St. Louis.....Mo. | 508 | 431 | 356 | 279 | 254 | 203 | 191 | 177 | 165 | 152 | 140 | 128 | 229 | 165 | 127 | 114 | 102 | 97 |
| West Haven.....Conn. | Chicago.....Ill. | 460 | 391 | 322 | 253 | 231 | 184 | 172 | 161 | 150 | 138 | 126 | 115 | 207 | 150 | 115 | 104 | 92 | 87 |
| | St. Louis.....Mo. | 516 | 439 | 361 | 284 | 258 | 206 | 194 | 181 | 167 | 155 | 142 | 130 | 232 | 168 | 129 | 116 | 103 | 98 |
| Willimantic.....Conn. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 |
| | St. Louis.....Mo. | 522 | 444 | 365 | 288 | 261 | 209 | 196 | 183 | 169 | 157 | 144 | 131 | 235 | 170 | 131 | 117 | 104 | 99 |
| Woonsocket.....R.I. | Chicago.....Ill. | 481 | 409 | 337 | 265 | 241 | 193 | 181 | 168 | 156 | 145 | 133 | 120 | 216 | 156 | 120 | 108 | 96 | 91 |
| | St. Louis.....Mo. | 537 | 456 | 375 | 295 | 268 | 214 | 201 | 188 | 174 | 161 | 148 | 135 | 242 | 175 | 134 | 121 | 107 | 102 |
| Worcester.....Mass. | Chicago.....Ill. | 466 | 396 | 326 | 256 | 234 | 187 | 174 | 163 | 152 | 140 | 129 | 116 | 210 | 151 | 117 | 105 | 93 | 89 |
| | St. Louis.....Mo. | 522 | 444 | 365 | 288 | 261 | 209 | 196 | 183 | 169 | 157 | 144 | 131 | 235 | 170 | 131 | 117 | 104 | 99 |

TARIFF AUTHORITY:

A - Rail 28300 class rates per The Central Territory Railroads Tariff Bureau Tariff E-1009, I.C.C. No. 4487, H. R. Hinsch, Tariff Publishing Officer.

B - Proposed All Articles rates per Section 2 of The New York, New Haven and Hartford Railroad Company Tariff I.C.C. No. F-4501.

I. & S. DOCKET NO. 7131
WITNESS

868

STATEMENT

SHOWING A COMPARISON OF THE PRESENT RAIL PLAN II RATES PUBLISHED IN NEW ENGLAND TERRITORY RAILROADS
TARIFF I.C.C. NO. N-4, AND THE PRESENT EASTERN CENTRAL RATES WITH THE ALL ARTICLES RATES UNDER INVESTIGATION
IN I. & S. DOCKET NO. 7131 FROM NEW ENGLAND ORIGINS TO CHICAGO, ILL. AND ST. LOUIS, MO.

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 28300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.M.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
|---------------------|---|--------------------|-------------------|--------------------------------------|--------------------|-------------|------|-------------|--------------------------|------|-------------|------|--|------|---------------------|------|---------------------|------|---------------------|------|---------------------|------|---------------------|------|
| | | | | | RATE | MIN. WT. | % | ITEM NO. | TARIFF NO.-ICC NO. | RATE | MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 3300-A | Abrasives | Worcester....Mass. | Chicago.....Ill. | 466 | 127 | 25M | 27.3 | 5730 | A-159 | 127 | 25M | 27.3 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| 3310 | Advertising Matter | Boston.....Mass. | Chicago.....Ill. | 473 | 198 | 23M | 41.9 | 5840 | A-159 | 198 | 23M | 41.9 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | Hartford.....Conn. | Chicago.....Ill. | 460 | 198 | 23M | 43.0 | 5840 | A-159 | 198 | 23M | 43.0 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 3310 | Advertising Matter | Springfield..Mass. | Chicago.....Ill. | 453 | 198 | 23M | 43.7 | 5840 | A-159 | 198 | 23M | 43.7 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 3355 | Asbestos Articles | Bridgeport...Comm. | Chicago.....Ill. | 460 | 247 | 10M | 53.7 | 6450 | A-159 | 247 | 10M | 53.7 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | St. Louis.....Mo. | 516 | 326 | 10M | 63.2 | 6450 | A-159 | 326 | 10M | 63.2 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| 3435 | Battery Boxes and Mixed Commodities | Boston.....Mass. | Chicago.....Ill. | 473 | 273 | 15M | 57.7 | Repr. | A-168 | 325 | 16M | 68.7 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 308 | 15M | 58.2 | CL 70 | | 363 | 16M | 68.6 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 3440-A | Battery Insulating Partitions | Providence....R.I. | Chicago.....Ill. | 481 | 174 | 28M | 36.2 | 7400 | A-159 | 174 | 28M | 36.2 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| | | | St. Louis.....Mo. | 537 | 198 | 28M | 36.9 | 7400 | A-159 | 198 | 28M | 36.9 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 |
| 3445 | Belts or Belting | Boston.....Mass. | Chicago.....Ill. | 473 | 189 | 30M | 40.0 | 7430 | A-159 | 189 | 30M | 40.0 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 3450 | Bins or Shelving, steel or steel & wood comb. | | Chicago.....Ill. | 473 | 162 | 20M | 34.2 | CL 40 | A-132 | 185 | 20M | 39.1 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | Boston.....Mass. | St. Louis.....Mo. | 529 | 181 | 20M | 34.2 | CL 40 | A-132 | 208 | 20M | 39.3 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| | | Springfield..Mass. | St. Louis.....Mo. | 508 | 175 | 20M | 34.4 | CL 40 | A-132 | 200 | 20M | 39.4 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 |
| | | Worcester....Mass. | St. Louis.....Mo. | 522 | 179 | 20M | 34.3 | CL 40 | A-132 | 205 | 20M | 39.3 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 |
| 3460-C | Books, N.O.I.B.N. | Boston.....Mass. | Chicago.....Ill. | 473 | 133 | 24M | 28.1 | 8850-C | A-164 | 133 | 24M | 28.1 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | | | 131 | 30M | 27.7 | | | | | | | | | | | | | | | | | |
| 3495-A | Boot and Shoe Factory Supplies | Boston.....Mass. | St. Louis.....Mo. | 529 | 183 | 30M | 34.6 | 7810 | A-159 | 204 | 30M | 38.6 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 3505-A | Heels, Soles or Soling | Boston.....Mass. | Chicago.....Ill. | 473 | 167 | 30M | 35.3 | 10690 | A-159 | 167 | 30M | 35.3 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 189 | 30M | 35.7 | 13780 | A-159 | 189 | 30M | 35.7 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 3510 | Boxes, Fibreboard | New Haven....Conn. | Chicago.....Ill. | 460 | 133 | 32M | 28.9 | 6250 | A-164 | 133 | 32M | 28.9 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | Boston.....Mass. | Chicago.....Ill. | 473 | 122 | 32M | 25.8 | 1280 | A-156 | 147 | 23M | 31.1 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | | | 115 | 36M | 24.3 | CL 35 | | | | | | | | | | | | | | | | |
| | | | | | 109 | 40M | 23.0 | | | | | | | | | | | | | | | | | |
| 3520 | Brake Lining, Washers | Hartford.....Conn. | Chicago.....Ill. | 460 | 197 | 20M | 42.8 | 8190 | A-159 | 197 | 20M | 42.8 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 28300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.M.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
|---------------------|--|---------------------|-------------------|--------------------------------------|--------------------|-------------|------|----------------|---------------|------|-------------|------|--|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|
| | | | | | RATE | MIN. WT. | \$ | ITEM NO. | TARIFF NO. | RATE | MIN. WT. | \$ | RATE MIN. WT. 20M | \$ | RATE MIN. WT. 30M | \$ | RATE MIN. WT. 40M | \$ | RATE MIN. WT. 50M | \$ | RATE MIN. WT. 60M | \$ | RATE MIN. WT. 70M | \$ |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 3520 | Brake Lining, Washers | Springfield...Mass. | Chicago.....Ill. | 453 | 197 | 20M | 43.5 | 8190 | A-159 | 197 | 20M | 43.5 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 3550-B | Brass, Bronze & Copper Ingots, shot | Springfield...Mass. | Chicago.....Ill. | 453 | 122 | 30M | 26.9 | 7850-A | A-163 | 122 | 30M | 26.9 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| | | | St. Louis.....Mo. | 508 | 138 | 30M | 27.2 | | | 138 | 30M | 27.2 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 |
| 3555 | Brass, Bronze & Copper Ingots, shot | Hartford.....Conn. | Chicago.....Ill. | 460 | 122 | 30M | 26.5 | 7850-A | A-163 | 122 | 30M | 26.5 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | St. Louis.....Mo. | 516 | 140 | 30M | 27.1 | | | 140 | 30M | 27.1 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| 3560 | Brass, Bronze Copper Cable, electric, etc. | Bridgeport...Conn. | Chicago.....Ill. | 460 | 132 | 23M | 28.7 | | | 140 | 23M | 30.4 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | St. Louis.....Mo. | 516 | 122 | 32M | 26.5 | 7400-B | A-163 | 130 | 30M | 28.3 | | | | | | | | | | | | |
| | | | | | 141 | 30M | 27.3 | | | 149 | 30M | 28.9 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| | | | | | | | | | | 160 | 23M | 34.8 | | | | | | | | | | | | |
| 3575 | Brush Factory Products | Hartford.....Conn. | St. Louis.....Mo. | 516 | 150 | 32M | 29.1 | 8380 | A-159 | 150 | 32M | 29.1 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| 3580 | Brush Factory Products | Hartford.....Conn. | Chicago.....Ill. | 460 | 137 | 22M | 29.8 | Repr. CL 45 | A-132 | 203 | 20M | 44.1 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 3585-B | Buffing or Polishing Compound | Boston.....Mass. | Chicago.....Ill. | 473 | 143 | 30M | 30.2 | 8440 | A-159 | 143 | 30M | 30.2 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 171 | 30M | 32.3 | | | 171 | 30M | 36.2 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 3620 | Candy or Confectionery | Stamford.....Conn. | Chicago.....Ill. | 466 | 121 | 28M | 26.0 | 360 | A-156 | 158 | 23M | 33.9 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| | | Boston.....Mass. | Chicago.....Ill. | 473 | 121 | 28M | 25.6 | 1950 | A-154 | 121 | 28M | 25.6 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 3645 | Candy or Confectionery | Boston.....Mass. | St. Louis.....Mo. | 529 | 153 | 30M | 28.9 | 1870-C | A-154 | 153 | 30M | 28.9 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 3655 | Casters, furniture | Bridgeport...Conn. | Chicago.....Ill. | 460 | 134 | 30M | 29.1 | 8940 | A-159 | 134 | 30M | 29.1 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 3660 | Catalogues and Parts | Boston.....Mass. | Chicago.....Ill. | 473 | 198 | 23M | 41.9 | CL 35 | A-168 | 162 | 20M | 34.2 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | Hartford.....Conn. | Chicago.....Ill. | 460 | 198 | 23M | 43.0 | | | 158 | 20M | 34.3 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 3670 | Cement, Latex | Boston.....Mass. | Chicago.....Ill. | 473 | 146 | 30M | 30.9 | 9060 | A-159 | 146 | 30M | 30.9 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 3675 | Chemicals | Boston.....Mass. | Chicago.....Ill. | 473 | 137 | 25M | 29.0 | 9600 | A-159 | 137 | 25M | 29.0 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 158 | 25M | 29.9 | | | 158 | 25M | 29.9 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 3760 | Clothing, oiled, water- proofed | Boston.....Mass. | Chicago.....Ill. | 473 | 264 | 16M | 55.8 | 10330 | A-159 | 264 | 16M | 55.8 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | Providence....R.I. | Chicago.....Ill. | 481 | 264 | 16M | 54.9 | | | 264 | 16M | 54.9 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| 3770 | Freight, All Kinds | Boston.....Mass. | Chicago.....Ill. | 473 | 200 | 20M | 42.3 | 7025 | A-170 | 200 | 20M | 42.3 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 239 | 20M | 45.2 | 7050-A | A-170 | 239 | 20M | 45.2 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 20300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.N.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
|---------------------|--|---------------------|-------------------|--------------------------------------|--------------------|-------------|--------------|-------------|--------------------------|--------------|-------------|--------------|--|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|
| | | | | | RATE | MIN. WT. | % | ITEM NO. | TARIFF NO.-ICC NO. | RATE | MIN. WT. | % | RATE MIN. WT. 20M | % | RATE MIN. WT. 30M | % | RATE MIN. WT. 40M | % | RATE MIN. WT. 50M | % | RATE MIN. WT. 60M | % | RATE MIN. WT. 70M | % |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 3775 | Ink, writing, stamping, etc. | Boston.....Mass. | Chicago.....Ill. | 473 | 158 | 23M | 33.4 | 13870 | A-159 | 158 | 23M | 33.4 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 3780 | Commodities in mixed ship- ments | New Britain...Conn. | Chicago.....Ill. | 460 | 195 | 20M | 42.4 | 7025-B | A-170 | 195 | 20M | 42.4 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 3820 | Compounds, Vis; Cleaning, Scouring, Washing | Holyoke.....Mass. | Chicago.....Ill. | 453 | 127 | 32M | 28.0 | 10010 | A-159 | 123 | 32M | 27.2 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| | | | St. Louis.....Mo. | 508 | 146 | 32M | 28.7 | | | | | | | | | | | | | | | | | |
| 3830 | Cleaning, Scouring or Washing Compounds | Boston.....Mass. | Chicago.....Ill. | 473 | 129 | 30M | 27.3 | 9980 | A-159 | 129 | 30M | 27.3 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 148 | 30M | 28.0 | | | | | | | | | | | | | | | | | |
| 3855 | Pipe Fittings & Valves A | Boston.....Mass. | Chicago.....Ill. | 473 | A179 B135 | 30M | 37.8 28.5 | 10890 | A-159 | A179 B135 | 30M | 37.8 28.5 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 3880 | Curtain Poles or Rods | Wallingford...Conn. | Chicago.....Ill. | 460 | 166 | 23M | 36.1 | 11080 | A-159 | 166 | 23M | 36.1 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 3885 | Curtain Poles or Rods | Cranston.....R.I. | Chicago.....Ill. | 481 | 179 | 30M | 37.2 | 11090 | A-159 | 179 | 30M | 37.2 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| 3905 | Devices, timing | Providence....R.I. | St. Louis.....Mo. | 537 | 166 | 16M | 70.0 | CL 70 | A-168 | 370 | 16M | 68.9 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 |
| 3920-B | Drugs, Medicines, Chemicals | Bridgeport...Conn. | Chicago.....Ill. | 460 | 129 | 24M | 28.0 | 11230 | A-159 | 137 | 24M | 29.8 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | St. Louis.....Mo. | 516 | 158 | 24M | 30.6 | | | | | | | | | | | | | | | | | |
| | | Boston.....Mass. | Chicago.....Ill. | 473 | 137 | 24M | 29.0 | 11230 | A-159 | 137 | 24M | 29.0 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 158 | 24M | 29.9 | | | | | | | | | | | | | | | | | |
| 3920-B | Drugs, Medicines, Chemicals | Springfield...Mass. | Chicago.....Ill. | 453 | 137 | 24M | 30.2 | 11230 | A-159 | 137 | 24M | 30.2 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 3930 | Toilet Pre- parations, N.O.I.B.N. | Worcester....Mass. | St. Louis.....Mo. | 508 | 151 | 24M | 29.7 | 11240 | A-159 | 151 | 24M | 29.7 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 |
| | | | St. Louis.....Mo. | 522 | 158 | 30M | 30.3 | | | | | | | | | | | | | | | | | |
| | | | | | | | | | A-159 | 158 | 30M | 30.3 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 |

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A. 28300 FIRST CLASS RATE | B. RAIL PLAN II | | | ITEM NO. | E.C.M.C.A. | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
|---------------------|--|---------------------|-------------------|---------------------------------------|--------------------|-------------|------|-------------|---------------|------|-------------|------|--|------|---------------------|------|---------------------|------|---------------------|------|---------------------|------|---------------------|------|
| | | | | | RATE | MIN. WT. | % | | TARIFF NO. | RATE | MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 3950 | Electric Appliances, Plugs, Sockets, etc. | Hartford.....Conn. | Chicago.....Ill. | 460 | 166 | 23M | 36.1 | 11510 | A-159 | 166 | 23M | 36.1 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | Hartford.....Conn. | St. Louis.....Mo. | 516 | 156 | 30M | 33.9 | | | 156 | 30M | 33.9 | | | | | | | | | | | | |
| 3950 | Electric Appliances, Plugs, Sockets, etc. | Hartford.....Conn. | St. Louis.....Mo. | 516 | 165 | 30M | 32.0 | 11510 | A-159 | 165 | 30M | 32.0 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| | | Springfield..Mass. | Chicago.....Ill. | 453 | 166 | 23M | 36.6 | | | 166 | 23M | 36.6 | | | | | | | | | | | | |
| 3960 | Electric Switches, etc. | New Bedford..Mass. | Chicago.....Ill. | 481 | 168 | 23M | 34.9 | 11720 | A-159 | 168 | 23M | 34.9 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| | | | | | 158 | 30M | 32.8 | | | | | | | | | | | | | | | | | |
| 3990 | Electric Motors or Parts | Hartford.....Conn. | Chicago.....Ill. | 460 | 163 | 20M | 35.4 | 11550 | A-159 | 163 | 20M | 35.4 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 104 | 22.6 | 92 | 18.9 |
| 4005-A | Electric Wiring Devices | Providence....R.I. | Chicago.....Ill. | 481 | 168 | 23M | 34.9 | 11960 | A-159 | 168 | 23M | 34.9 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| 4015 | Film, Cellulose | Boston.....Mass. | Chicago.....Ill. | 473 | 158 | 30M | 32.8 | | | 158 | 30M | 32.8 | | | | | | | | | | | | |
| 4020 | Pipe Fittings, Brass, Bronze | Boston.....Mass. | Chicago.....Ill. | 473 | 170 | 32M | 35.9 | 8985 | A-159 | 133 | 30M | 28.1 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 4040-A | Floor Covering, Hard Surface and Supplies | S. Braintree..Mass. | Chicago.....Ill. | 473 | 149 | 30M | 31.5 | 8220-10 | A-159 | 128 | 30M | 27.1 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 122 | 30M | 25.8 | | | 122 | 30M | 25.8 | | | | | | | | | | | | |
| 4085 | Foodstuffs, Pizza Pie | Worcester....Mass. | Chicago.....Ill. | 466 | 146 | 24M | 31.3 | 4950-A | A-154 | 146 | 24M | 31.3 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| | | | St. Louis.....Mo. | 522 | 133 | 30M | 28.5 | | | 133 | 30M | 28.5 | | | | | | | | | | | | |
| 4155-A | Glue, N.O.I.B.N., dry or liquid | Wallingford..Conn. | Chicago.....Ill. | 460 | 149 | 30M | 28.5 | 4950-A | A-154 | 149 | 30M | 28.5 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 |
| | | | St. Louis.....Mo. | 516 | 159 | 30M | 30.8 | | | 159 | 30M | 30.8 | | | | | | | | | | | | |
| 4155-A | Glue, N.O.I.B.N., dry or liquid | Wallingford..Conn. | Chicago.....Ill. | 460 | 141 | 30M | 30.7 | 13390 | A-159 | 141 | 30M | 30.7 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 4175 | Builders Hardware | New Britain..Conn. | Chicago.....Ill. | 460 | 197 | 20M | 42.8 | 8510 | A-159 | 197 | 20M | 42.8 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 29300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.M.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | | |
|---------------------|---|-------------------|---------------------------------------|--------------------------------------|----------------------|-------------------|----------------------|--------------|-------------------|----------------------|-------------------|----------------------|--|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|--------------|-----------|--------------|------|
| | | | | | RATE | MIN. WT. | % | ITEM NO. | TARIFF NO.-ICC | RATE | MIN. WT. | % | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | RATE MIN. WT. | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | |
| 4180 | AChains, belting not less 2.5 inches BChains, belting less 2.5 inches C Wheels, sprocket | Hartford....Conn. | Chicago.....Ill. | 460 | A156 B201 C158 | 30M 30M 30M | 33.9 43.7 34.3 | 13640 | A-159 | A156 B201 C158 | 30M 30M 30M | 33.9 43.7 34.3 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | |
| 4195 | Insecticides, other than agricultural | Bridgeport..Conn. | Chicago.....Ill. | 460 | | 130 | 30M | 28.3 | 13900 | A-159 | 130 | 30M | 28.3 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| 4255 | Iron or Steel Bolts, Screws, Washers | Worcester...Mass. | Chicago.....Ill. | 466 | | 121 | 30M | 26.0 | 5800-B | A-155 | 121 | 30M | 26.0 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| 4260 | Bolts, Nuts or Screws | Hartford....Conn. | Chicago.....Ill. | 460 | 141 121 | 25M 30M | 30.7 26.3 | 5700-F | A-155 | 141 121 | 25M 30M | 30.7 26.3 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | |
| 4275 | Iron or Steel Castings, etc. | Worcester...Mass. | Chicago.....Ill. | 466 | 125 | 32M | 26.8 | 5875 | A-155 | 125 | 32M | 26.8 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 | |
| 4370 | Sole Leather | Boston.....Mass. | Chicago.....Ill. | 473 | 148 | 30M | 31.3 | 19290 | A-159 | 158 | 30M | 33.4 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 | |
| 4375-B | Alcoholic Liquor, in glass | Boston.....Mass. | Chicago.....Ill. St. Louis.....Mo. | 473 529 | 153 177 | 30M 30M | 32.3 33.5 | 2025 2500 | A-162 A-162 | 153 187 | 30M 30M | 32.3 35.3 | 213 238 | 45.0 45.0 | 154 172 | 32.6 32.5 | 118 132 | 24.9 25.0 | 106 119 | 22.4 22.5 | 95 106 | 20.1 20.0 | 90 101 | 19.0 19.1 | |
| 4375-B | Alcoholic Liquor, in glass | Springfield.Mass. | Chicago.....Ill. | 453 | 151 | 30M | 33.3 | 2100 | A-162 | 151 | 30M | 33.3 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | |
| 4375-B | Alcoholic Liquor, in glass | Hartford....Conn. | Chicago.....Ill. | 460 | 158 | 30M | 34.3 | 2050 | A-162 | 158 | 30M | 34.3 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | |
| 4375-B | Alcoholic Liquor in bulk | Boston.....Mass. | Chicago.....Ill. St. Louis.....Mo. | 473 529 | 153 177 | 30M 30M | 32.3 33.5 | 2025 2500 | A-162 A-162 | 153 177 | 30M 30M | 32.3 33.5 | 213 238 | 45.0 45.0 | 154 172 | 32.6 32.5 | 118 132 | 24.9 25.0 | 106 119 | 22.4 22.5 | 95 106 | 20.1 20.0 | 90 101 | 19.0 19.1 | |
| 4375-B | Alcoholic Liquor in bulk | Hartford....Conn. | Chicago.....Ill. | 460 | 151 | 30M | 32.8 | 2050 | A-162 | 151 | 30M | 32.8 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 | |

| Page 6 | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------|---|--------------------|-------------------|--------------------------------------|--------------------|-----|------|-------------|--------------------------|------|------|------|--|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|
| MAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 28300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.M.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
| | | | | | RATE | WT. | % | ITEM NO. | TARIFF NO.-ICC NO. | RATE | WT. | % | RATE MIN. WT. 20M | % | RATE MIN. WT. 30M | % | RATE MIN. WT. 40M | % | RATE MIN. WT. 50M | % | RATE MIN. WT. 60M | % | RATE MIN. WT. 70M | % |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 17 | 18 | 19 | 20 | 21 | 22 |
| 440 | Wine Sheet | Boston.....Mass. | Chicago.....Ill. | 473 | 277 | 18M | 58.6 | 15380 | A-159 | 277 | 18M | 58.6 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 445 | Wine Splitting | Boston.....Mass. | Chicago.....Ill. | 473 | 247 | 18M | 52.2 | 15390 | A-159 | 247 | 18M | 52.2 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 446 | Wine, Bottle | Boston.....Mass. | Chicago.....Ill. | 473 | 168 | 25M | 35.5 | 1180 | A-156 | 168 | 25M | 35.5 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 446 | Office Supplies | Boston.....Mass. | Chicago.....Ill. | 473 | 146 | 23M | 30.9 | 15560 | A-159 | 121 | 30M | 25.6 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 149 | 30M | 28.2 | 15560 | A-159 | 149 | 30M | 28.2 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 448 | Gills, other than Petroleum | Stamford.....Conn. | Chicago.....Ill. | 466 | 131 | 30M | 28.1 | 4550 | A-149 | 131 | 30M | 28.1 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| 449 | Shillpaper, H.O.I.B.N. | Worcester....Mass. | Chicago.....Ill. | 466 | 164 | 25M | 35.2 | 7725 | A-164 | 164 | 25M | 35.2 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| 450 | Paper & Paper Articles | Springfield..Mass. | Chicago.....Ill. | 453 | 128 | 23M | 28.3 | 1280 | A-156 | 146 | 23M | 32.2 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 455 | Cards, H.O.I.B.N. | Springfield..Mass. | Chicago.....Ill. | 453 | 183 | 23M | 40.4 | 8300-B | A-164 | 195 | 23M | 43.0 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 460 | Greeting Cards | Boston.....Mass. | Chicago.....Ill. | 473 | 187 | 23M | 39.5 | 8775 | A-164 | 187 | 23M | 39.5 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | | | 162 | 30M | 34.2 | 8225-A | | 162 | 30M | 34.2 | | | | | | | | | | | | |
| 465 | Printed Matter | Springfield..Mass. | Chicago.....Ill. | 453 | 196 | 18M | 43.3 | CL 40 | A-132 | 178 | 20M | 39.3 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 4610 | Pads, Tablets, Blank Books | Springfield..Mass. | Chicago.....Ill. | 453 | 178 | 20M | 39.3 | CL 45 | A-132 | 199 | 20M | 43.9 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 4625 | Petroleum Oil, H.O.I.B.N. | Springfield..Mass. | Chicago.....Ill. | 453 | 128 | 25M | 28.3 | | A-128 | 25M | 28.3 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 | |
| | | | St. Louis.....Mo. | 508 | 144 | 25M | 28.3 | 17190 | A-159 | 144 | 25M | 28.3 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 |
| 4635 | Plastic Bowls, throw away | Boston.....Mass. | Chicago.....Ill. | 473 | 165 | 30M | 34.9 | 17570 | A-159 | 165 | 30M | 34.9 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 185 | 30M | 35.0 | | | 185 | 30M | 35.0 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| 4640-B | Plastic Material or Products | Springfield..Mass. | Chicago.....Ill. | 453 | 129 | 30M | 28.5 | 17600 | A-159 | 133 | 30M | 29.4 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| | | | | | 137 | 23M | 30.2 | | | 144 | 23M | 31.8 | | | | | | | | | | | | |
| | | | St. Louis.....Mo. | 508 | 149 | 30M | 29.3 | 17600 | A-159 | 149 | 30M | 29.3 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 |
| 4645-C | Plastic, Powder, Granules, Pellets | Worcester....Mass. | Chicago.....Ill. | 466 | 139 | 30M | 29.8 | 17840 | A-159 | 139 | 30M | 29.8 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| | | | | | 166 | 23M | 31.8 | | | 166 | 23M | 31.8 | | | | | | | | | | | | |
| | | | | | 154 | 30M | 29.5 | 17840 | A-159 | 154 | 30M | 29.5 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 |
| | | | | | 146 | 35M | 28.0 | | | - | - | - | | | | | | | | | | | | |
| | | | | | 139 | 40M | 26.6 | | | | | | | | | | | | | | | | | |

975

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 28300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.M.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
|---------------------|---|---------------------|-------------------|--------------------------------------|--------------------|-------------|------|------------------|---------------|------|-------------|------|--|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|----------------------------|------|
| | | | | | RATE | MIN. WT. | \$ | ITEM NO. | TARIFF NO. | RATE | MIN. WT. | \$ | RATE MIN. WT. 20M | \$ | RATE MIN. WT. 30M | \$ | RATE MIN. WT. 40M | \$ | RATE MIN. WT. 50M | \$ | RATE MIN. WT. 60M | \$ | RATE MIN. WT. 70M | \$ |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 4675-A | Plastic Materials or Products | Wallingford...Conn. | Chicago.....Ill. | 460 | 129 | 30M | 28.0 | 17800 | A-159 | 129 | 30M | 28.0 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | St. Louis.....Mo. | 516 | 149 | 30M | 28.9 | 17700 | A-159 | 149 | 30M | 28.9 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| | | | | | 159 | 23M | 30.8 | | | 164 | 23M | 31.8 | | | | | | | | | | | | |
| 4685 | Plastic Granules | Pawtucket.....R.I. | St. Louis.....Mo. | 537 | 158 | 30M | 29.4 | 17500 | A-159 | 158 | 30M | 29.4 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.1 | 102 | 19.0 |
| 4690 | Plastic Scrap | Boston.....Mass. | Chicago.....Ill. | 473 | 162 | 23M | 34.2 | 220 | A-132 | 162 | 23M | 34.2 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | | St. Louis.....Mo. | 529 | 181 | 23M | 34.2 | | | 181 | 23M | 34.2 | 238 | 45.0 | 172 | 32.5 | 132 | 25.0 | 119 | 22.5 | 106 | 20.0 | 101 | 19.1 |
| | | | Chicago.....Ill. | 466 | 160 | 23M | 34.3 | 220 | A-132 | 160 | 23M | 34.3 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| 4700 | Plumbers Goods | Waterbury....Conn. | St. Louis.....Mo. | 522 | 179 | 23M | 34.3 | | | 179 | 23M | 34.3 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 |
| | | | Chicago.....Ill. | 453 | 181 | 23M | 40.0 | 18040 | A-159 | 181 | 23M | 40.0 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 4730 | Roofing or Siding Material | Providence....R.I. | Chicago.....Ill. | 481 | 119 | 32M | 24.7 | 18420 | A-159 | 119 | 32M | 24.7 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| 4760 | Rubber Articles | Boston.....Mass. | Chicago.....Ill. | 473 | 255 | 10M | 53.9 | 18570 | A-159 | 255 | 10M | 53.9 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | Bristol.....R.I. | Chicago.....Ill. | 481 | 264 | 10M | 54.9 | | | 265 | 10M | 55.1 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| 4805 | Cocoa or Cocoa Syrup | Stamford.....Conn. | St. Louis.....Mo. | 508 | 132 | 28M | 26.0 | CL 372 I. 360 | A-156 | 175 | 23M | 34.4 | 229 | 45.1 | 165 | 32.5 | 127 | 25.0 | 114 | 22.4 | 102 | 20.1 | 97 | 19.1 |
| 4810 | Syrup, flavoring | New Haven....Conn. | Chicago.....Ill. | 460 | 161 | 20M | 35.0 | 5705 | A-154 | 161 | 20M | 35.0 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | St. Louis.....Mo. | 516 | 181 | 20M | 35.1 | | | 181 | 20M | 35.1 | 232 | 45.0 | 168 | 32.6 | 129 | 25.0 | 116 | 22.5 | 103 | 20.0 | 98 | 19.0 |
| 4865 | Tools, Wrenches | Boston.....Mass. | Chicago.....Ill. | 473 | 168 | 23M | 35.5 | 20210 | A-159 | 168 | 23M | 35.5 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| | | New Haven....Conn. | Chicago.....Ill. | 460 | 166 | 25M | 36.1 | | | 166 | 23M | 36.1 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | Worcester....Mass. | Chicago.....Ill. | 466 | 168 | 23M | 36.1 | | | 168 | 23M | 36.1 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| | | Springfield..Mass. | Chicago.....Ill. | 453 | 166 | 23M | 36.6 | | | 166 | 23M | 36.6 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 4895 | Typewriters | Hartford.....Conn. | Chicago.....Ill. | 460 | 233 | 18M | 50.7 | 20360 | A-159 | 233 | 18M | 50.7 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | Springfield..Mass. | Chicago.....Ill. | 453 | 233 | 18M | 51.4 | | | 233 | 18M | 51.4 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |
| 4905-A | Valves, Brass | Bridgeport...Conn. | Chicago.....Ill. | 460 | 212 | 23M | 46.1 | 20440 | A-159 | 212 | 23M | 46.1 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | | | 179 | 30M | 38.9 | | | 179 | 30M | 38.9 | | | | | | | | | | | | |
| 4910-A | Valves, Iron or Steel | Bridgeport...Conn. | Chicago.....Ill. | 460 | 165 | 23M | 35.9 | 20450 | A-159 | 165 | 23M | 35.9 | 207 | 45.0 | 150 | 32.6 | 115 | 25.0 | 104 | 22.6 | 92 | 20.0 | 87 | 18.9 |
| | | | | | 135 | 30M | 29.3 | 20460 | | 135 | 30M | 29.3 | | | | | | | | | | | | |
| 4915 | Vehicles | Boston.....Mass. | Chicago.....Ill. | 473 | 185 | 20M | 39.1 | CL 60 Repr. | A-132 | 279 | 18M | 59.0 | 213 | 45.0 | 154 | 32.6 | 118 | 24.9 | 106 | 22.4 | 95 | 20.1 | 90 | 19.0 |
| 4920 | Vehicle Parts | Worcester....Mass. | Chicago.....Ill. | 466 | 228 | 23M | 48.9 | 20600 | A-159 | 228 | 23M | 48.9 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |

| RAIL ITEM NO. | ABBREVIATED COMMODITY DESCRIPTION | FROM | TO | A 28300 FIRST CLASS RATE | B. RAIL PLAN II | | | E.C.M.C.A. | | | | | C. ALL ARTICLES RATES UNDER INVESTIGATION I. & S. 7131 | | | | | | | | | | | |
|---------------------|---|--------------------|---------------------------------------|--------------------------------------|--------------------|-------------|--------------|-------------|--------------------------|------------|-------------|--------------|--|--------------|---------------------|--------------|---------------------|--------------|---------------------|--------------|---------------------|--------------|---------------------|--------------|
| | | | | | RATE | MIN. WT. | % | ITEM NO. | TARIFF NO.-ICC NO. | RATE | MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % | RATE MIN. WT. | % |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 1930 | Venetian Blinds | New Bedford..Mass. | Chicago.....Ill. St. Louis.....Mo. | 481 537 | 128 134 | 30M 30M | 26.6 25.4 | CL 50 | A-168 | 237 263 | 20M 20M | 49.3 49.0 | 216 242 | 44.9 45.1 | 156 175 | 32.4 32.6 | 120 134 | 24.9 25.0 | 108 121 | 22.5 22.5 | 96 107 | 20.0 19.9 | 91 102 | 18.9 19.0 |
| 1950 | Wire Goods | Worcester....Mass. | Chicago.....Ill. | 466 | 161 | 30M | 34.5 | 20850 | A-159 | 161 | 30M | 34.5 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| 1975 | Wire, Rods or Cable | Bristol.....R.I. | Chicago.....Ill. | 481 | 121 | 23M | 25.2 | 6250-F | A-155 | 121 | 23M | 25.2 | 216 | 44.9 | 156 | 32.4 | 120 | 24.9 | 108 | 22.5 | 96 | 20.0 | 91 | 18.9 |
| | | | St. Louis.....Mo. | 537 | 138 | 23M | 25.7 | | | 138 | 23M | 25.7 | 242 | 45.1 | 175 | 32.6 | 134 | 25.0 | 121 | 22.5 | 107 | 19.9 | 102 | 19.0 |
| | | Worcester....Mass. | Chicago.....Ill. | 466 | 121 | 23M | 26.0 | 6250-F | A-155 | 121 | 23M | 26.0 | 210 | 45.1 | 151 | 32.4 | 117 | 25.1 | 105 | 22.5 | 93 | 20.0 | 89 | 19.1 |
| | | | St. Louis.....Mo. | 522 | 138 | 23M | 26.4 | | | 138 | 23M | 26.4 | 235 | 45.0 | 170 | 32.6 | 131 | 25.1 | 117 | 22.4 | 104 | 19.9 | 99 | 19.0 |
| 1960 | Wire, Iron or Steel | Springfield..Mass. | Chicago.....Ill. | 453 | 121 | 23M | 26.7 | 6625-B | A-155 | 121 | 23M | 26.7 | 204 | 45.0 | 147 | 32.5 | 113 | 24.9 | 102 | 22.5 | 91 | 20.1 | 86 | 19.0 |

RAIL TARIFF AUTHORITY:

- A - 28300 first class rates per The Central Territory Railroads Tariff Bureau Tariff E-1009, I.C.C. No. 4487, H. R. Hinsch, Tariff Publishing Officer.
 B - Rail Plan II rates per the items listed taken from The New England Territory Railroads Tariff E-58, I.C.C. No. N-4, O. E. Swenson, Tariff Publishing Officer.
 C - Rates under investigation per Section 2 of The New York, New Haven and Hartford Railroad Company Tariff I.C.C. No. P-4501.

EXPLANATION OF REFERENCE MARKS:

- ♣ - Applies from Cambridge, Mass. (Item 8440)
 * - Applies from Bridgeport, Conn. (Item 11510)
 ♠ - Applies from Indian Orchard, Mass. (Item 17190)

[fol. 877]

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BEFORE THE INTERSTATE COMMERCE COMMISSION
RESPONDENTS' EXHIBIT 39

I. & S. DOCKET NO. 7131
WITNESS _____

STATEMENT

SHOWING COMPARISON OF PRESENTLY PUBLISHED RAIL COMMODITY RATES IN NEW ENGLAND TERRITORY
RAILROADS TARIFF 26-F, I.C.C. 591, O. E. SWENSON, TARIFF PUBLISHING OFFICER, WITH THE PROPOSED
ALL ARTICLES RATES AT VARIOUS WEIGHT BRACKETS, THE CHARGE PER SHIPMENT (IN DOLLARS) AND THE
PRESENT EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION RATE.

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|---------------------|-------------------|----------------|--|--------------|----------|---------------------------|--------------------|-------------------------------------|---------------------------|---------------------------------------|----------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Worcester.....Mass. | Chicago.....Ill. | 301-P | Abrasive Grain | 123 | - | \$ - | 210 | 20,000 | \$ 420.00 | A160 (Class 35 Item 50 NMFC) | 20,000 |
| | | | | | *30,000 | 369.00 | 151 | 30,000 | 453.00 | | |
| | | | | | 40,000 | 492.00 | 117 | 40,000 | 468.00 | | |
| | | | | | 50,000 | 615.00 | 105 | 50,000 | 525.00 | | |
| | | | | | 60,000 | 738.00 | 93 | 60,000 | 558.00 | | |
| 70,000 | 861.00 | 89 | 70,000 | 623.00 | | | | | | | |
| Worcester.....Mass. | Chicago.....Ill. | 302 | Abrasives | 127 | *36,000 | 457.20 | 210 | 20,000 | 420.00 | A160 (Class 35 Item 40 NMFC) | 20,000 |
| | | | | | - | - | 151 | 30,000 | 453.00 | | |
| | | | | | 40,000 | 508.00 | 117 | 40,000 | 468.00 | | |
| | | | | | 50,000 | 635.00 | 105 | 50,000 | 525.00 | | |
| | | | | | 60,000 | 762.00 | 93 | 60,000 | 558.00 | | |
| 70,000 | 889.00 | 89 | 70,000 | 623.00 | | | | | | | |
| Bridgeport....Conn. | St. Louis.....Mo. | 342-B | Ammunition for Small Arms | 157 | - | - | 232 | 20,000 | 464.00 | C194 | 30,000 |
| | | | | | - | - | 168 | 30,000 | 504.00 | | |
| | | | | | *40,000 | 628.00 | 129 | 40,000 | 516.00 | | |
| | | | | | 50,000 | 785.00 | 116 | 50,000 | 580.00 | | |
| | | | | | *60,000 | 792.00 | 103 | 60,000 | 618.00 | | |
| 132 | 70,000 | 924.00 | 98 | 70,000 | 686.00 | | | | | | |
| Boston.....Mass. | Chicago.....Ill. | 455-N | Boots or Shoes, Synthetic rubber or rubber and canvas combined | 235 | *20,000 | 470.00 | 213 | 20,000 | 426.00 | A325 (Class 70 12170 NMFC) | 16,000 |
| | | | | | 30,000 | 705.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 940.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 1175.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 1410.00 | 95 | 60,000 | 570.00 | | |
| | 70,000 | | | 1645.00 | 90 | 70,000 | 630.00 | A363 (Class 70 12170 NMFC) | 16,000 | | |
| | *20,000 | | | 538.00 | 238 | 20,000 | 476.00 | | | | |
| | 30,000 | | | 807.00 | 172 | 30,000 | 516.00 | | | | |
| | 40,000 | | | 1076.00 | 132 | 40,000 | 528.00 | | | | |
| | 50,000 | | | 1345.00 | 119 | 50,000 | 595.00 | | | | |
| 60,000 | 1614.00 | 106 | 60,000 | 636.00 | | | | | | | |
| 70,000 | 1883.00 | 101 | 70,000 | 707.00 | | | | | | | |
| | St. Louis.....Mo. | | | 269 | | | | | | | |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|---------------------|-------------------|----------------|---|--------------|----------|---------------------------|--------------------|----------|---------------------------|-------------------------------------|------------------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE * | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Springfield...Mass. | Chicago.....Ill. | 455-N | Boots or Shoes, Synthetic | 234 | *20,000 | \$ 468.00 | 204 | 20,000 | \$ 408.00 | A311 (Class 70 12170 NMFC) | 16,000 |
| | St. Louis.....Mo. | | | | 30,000 | 702.00 | 147 | 30,000 | 441.00 | | |
| | | | | | 40,000 | 936.00 | 113 | 40,000 | 452.00 | | |
| | | | | | 50,000 | 1170.00 | 102 | 50,000 | 510.00 | | |
| | | | | | 60,000 | 1404.00 | 91 | 60,000 | 546.00 | | |
| | | | | | 70,000 | 1638.00 | 86 | 70,000 | 602.00 | | |
| | | | | 263 | *20,000 | 526.00 | 229 | 20,000 | 458.00 | A349 (Class 70 12170 NMFC) | 16,000 |
| | | | | | 30,000 | 789.00 | 165 | 30,000 | 495.00 | | |
| | | | | | 40,000 | 1052.00 | 127 | 40,000 | 508.00 | | |
| | | | | | 50,000 | 1315.00 | 114 | 50,000 | 570.00 | | |
| | | | | | 60,000 | 1578.00 | 102 | 60,000 | 612.00 | | |
| | | | | | 70,000 | 1841.00 | 97 | 70,000 | 679.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 461 | Bowls, Plastic, designed for throwaway | 166 | - | - | 213 | 20,000 | 426.00 | CX165 | 30,000 |
| | | | | | *30,000 | 498.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 664.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 830.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 996.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 1162.00 | 90 | 70,000 | 630.00 | | |
| Bridgeport....Conn. | Chicago.....Ill. | 482½-B | Caster Parts, Viz.: Caster Bolts, etc. | 146 | - | - | 207 | 20,000 | 414.00 | C134 | 30,000 |
| | | | | | *30,000 | 438.00 | 150 | 30,000 | 450.00 | | |
| | | | | | 40,000 | 584.00 | 115 | 40,000 | 460.00 | | |
| | | | | | 50,000 | 730.00 | 104 | 50,000 | 520.00 | | |
| | | | | | 60,000 | 876.00 | 92 | 60,000 | 552.00 | | |
| | | | | | 70,000 | 1022.00 | 87 | 70,000 | 609.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 484-B | Cellulose Film | 165 | - | - | 213 | 20,000 | 426.00 | C144 C133 | 23,000 30,000 |
| | | | | | *32,000 | 528.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 660.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 825.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 990.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 1155.00 | 90 | 70,000 | 630.00 | | |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|---------------------|-------------------|----------------|--|--------------|----------|---------------------------|--------------------|----------|---------------------------|-------------------------------------|----------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Boston.....Mass. | Chicago.....Ill. | 515 | Cloth, mixture of wool and cotton, etc. | 250 | - | \$ - | 213 | 20,000 | \$ 426.00 | A394 (Class 85 27250 NMFC) | 12,000 |
| | | | | | *30,000 | 750.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 1000.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 1250.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 1500.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 1750.00 | 90 | 70,000 | 630.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 526-C | Cocoa Press Cake | 95 | - | - | 213 | 20,000 | 426.00 | A162 (Class 35 28120 NMFC) | 20,000 |
| | | | | | - | - | 154 | 30,000 | 462.00 | | |
| | | | | | - | - | 118 | 40,000 | 472.00 | | |
| | | | | | *50,000 | 475.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 570.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 665.00 | 90 | 70,000 | 630.00 | | |
| Boston.....Mass. | St. Louis.....Mo. | 533-B | Covers, Book Match | 197 | - | - | 238 | 20,000 | 476.00 | A284 (Class 55 79760 NMFC) | 20,000 |
| | | | | | *30,000 | 591.00 | 172 | 30,000 | 516.00 | | |
| | | | | | 40,000 | 788.00 | 132 | 40,000 | 528.00 | | |
| | | | | | 50,000 | 985.00 | 119 | 50,000 | 595.00 | | |
| | | | | | 60,000 | 1182.00 | 106 | 60,000 | 636.00 | | |
| | | | | | 70,000 | 1379.00 | 101 | 70,000 | 707.00 | | |
| Pittsfield....Mass. | Chicago.....Ill. | 561 | Transformers | 135 | - | - | 198 | 20,000 | 396.00 | B158 (Class 40 Item 620) | 23,000 |
| | | | | | *30,000 | 405.00 | 143 | 30,000 | 429.00 | | |
| | | | | | 40,000 | 540.00 | 110 | 40,000 | 440.00 | | |
| | | | | | 50,000 | 675.00 | 99 | 50,000 | 495.00 | | |
| | | | | | 60,000 | 810.00 | 88 | 60,000 | 528.00 | | |
| | | | | | 70,000 | 945.00 | 83 | 70,000 | 581.00 | | |
| Pittsfield....Mass. | St. Louis.....Mo. | 561 | Transformers | 156 | - | - | 221 | 20,000 | 442.00 | B181 (Class 40 Item 620) | 23,000 |
| | | | | | *30,000 | 468.00 | 160 | 30,000 | 480.00 | | |
| | | | | | 40,000 | 624.00 | 123 | 40,000 | 492.00 | | |
| | | | | | 50,000 | 780.00 | 111 | 50,000 | 555.00 | | |
| | | | | | 60,000 | 936.00 | 98 | 60,000 | 588.00 | | |
| | | | | | 70,000 | 1092.00 | 93 | 70,000 | 651.00 | | |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|---|-------------------|----------------|--|--------------|---|--|--|--|---|--|--|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Bridgeport....Conn. Hartford.....Conn. Meriden.....Conn. New Britain...Conn. | Chicago.....Ill. | 565-E | Electrical cr Hand Appliances | 216 | *20,000 30,000 40,000 50,000 60,000 70,000 | \$ 432.00 648.00 864.00 1080.00 1296.00 1512.00 | 207 150 115 104 92 89 | 20,000 30,000 40,000 50,000 60,000 70,000 | \$ 414.00 450.00 460.00 520.00 552.00 623.00 | A271 A249 A225 A203 B166 (Class 60, 55, 50, 45, NMFC and Class 40, Item 620) | 18,000 18,000 20,000 20,000 23,000 |
| Hartford.....Conn. | Chicago.....Ill. | 575 | Fabric, brake lining | 214 | *20,000 30,000 40,000 50,000 60,000 70,000 | 428.00 642.00 856.00 1070.00 1284.00 1498.00 | 207 150 115 104 92 87 | 20,000 30,000 40,000 50,000 60,000 70,000 | 414.00 450.00 460.00 520.00 552.00 609.00 | A249 (Class 55 13480 NMFC) | 18,000 |
| Boston.....Mass. | Chicago.....Ill. | 580-E | Fibre, Hemp, Jute, Sisal, etc. | 123 | *27,000 30,000 40,000 50,000 60,000 70,000 | 332.10 369.00 492.00 615.00 738.00 861.00 | 213 154 118 106 95 90 | 20,000 30,000 40,000 50,000 60,000 70,000 | 426.00 462.00 472.00 530.00 570.00 630.00 | A185 (Class 40 37700 37710 37720 NMFC) | 20,000 |
| | St. Louis.....Mo. | | | | *27,000 30,000 40,000 50,000 60,000 70,000 | 378.00 420.00 560.00 700.00 840.00 980.00 | 238 172 132 119 106 101 | 20,000 30,000 40,000 50,000 60,000 70,000 | 476.00 516.00 528.00 595.00 636.00 707.00 | A208 (Class 40 37700 37710 37720 NMFC) | 20,000 |
| Boston.....Mass. | Chicago.....Ill. | 598½ | Chairs and Tables, folding, steel, K.D. | 255 | *36,000 40,000 50,000 60,000 70,000 | 918.00 1020.00 1275.00 1530.00 1785.00 | 213 154 118 106 95 90 | 20,000 30,000 40,000 50,000 60,000 70,000 | 426.00 462.00 472.00 530.00 570.00 630.00 | A233 (Class 50 Various NMFC) | 20,000 |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|---------------------|-------------------|----------------|-----------------------------------|--------------|--|--|--|--|---|---------------------------------------|----------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Springfield...Mass. | St. Louis.....Mo. | 637-K | Plastic Materials | 145 | - *30,000 40,000 50,000 57,500 70,000 | \$ - 435.00 580.00 725.00 833.75 833.00 | 229 165 127 114 102 97 | 20,000 30,000 40,000 50,000 60,000 70,000 | \$ 458.00 495.00 508.00 570.00 612.00 679.00 | C149 | 30,000 |
| New Britain...Conn. | St. Louis.....Mo. | 646-E | Hardware, Iron or Steel | 157 | - *30,000 40,000 50,000 60,000 70,000 | - 471.00 628.00 785.00 942.00 1099.00 | 232 168 129 116 103 98 | 20,000 30,000 40,000 50,000 60,000 70,000 | 464.00 504.00 516.00 580.00 618.00 686.00 | A203 (Class 45 Various NMFC) | 20,000 |
| New Britain...Conn. | Chicago.....Ill. | 649-A | Hardware, Iron or Steel | 125 87 | - *45,000 50,000 60,000 70,000 | - 562.50 625.00 750.00 609.00 | 207 150 115 104 92 87 | 20,000 30,000 40,000 50,000 60,000 70,000 | 414.00 450.00 460.00 520.00 552.00 609.00 | C197 | 20,000 |
| Boston.....Mass. | Chicago.....Ill. | 665 | Ink, Writing, Stamping, etc. | 160 | - *50,000 60,000 70,000 | - 800.00 960.00 1120.00 | 213 154 118 106 95 90 | 20,000 30,000 40,000 50,000 60,000 70,000 | 426.00 462.00 472.00 530.00 570.00 630.00 | C158 | 23,000 |
| Boston.....Mass. | St. Louis.....Mo. | 727-E | Jute Butts and Cuttings | 118 | - *40,000 50,000 60,000 70,000 | - 472.00 590.00 708.00 826.00 | 238 172 132 119 106 101 | 20,000 30,000 40,000 50,000 60,000 70,000 | 476.00 516.00 528.00 595.00 636.00 707.00 | A181 (Class 35 37720 NMFC) | 20,000 |
| Boston.....Mass. | Chicago.....Ill. | 738-M | Latex (Liquid Crude Rubber) | 121 | - *40,000 50,000 60,000 70,000 | - 484.00 605.00 726.00 847.00 | 213 154 118 106 95 90 | 20,000 30,000 40,000 50,000 60,000 70,000 | 426.00 462.00 472.00 530.00 570.00 630.00 | C146 | 30,000 |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|---------------------|------------------|----------------|-----------------------------------|--------------|---|--|---|---|---|--|------------------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Worcester.....Mass. | Chicago.....Ill. | 748-C | Lubricants or Compounds | 129 | - *36,000 40,000 50,000 60,000 70,000 | - 464.40 516.00 645.00 774.00 903.00 | 210 151 117 105 93 89 | 20,000 30,000 40,000 50,000 60,000 70,000 | \$ 420.00 453.00 468.00 525.00 558.00 623.00 | A160 (Class 35 68410 NMFC) | 20,000 |
| Boston.....Mass. | Chicago.....Ill. | 755 | Magazines or Periodicals | 147 | - *36,000 40,000 50,000 60,000 70,000 | - 529.20 588.00 735.00 882.00 1029.00 | 213 154 118 106 95 90 | 20,000 30,000 40,000 50,000 60,000 70,000 | 426.00 462.00 472.00 530.00 570.00 630.00 | E162 E132 (Class 35 & 35P Item 250) | 20,000 32,000 |
| Saylesville....R.I. | Chicago.....Ill. | 797 | Paper, viz.: Book Pages | 144 122 | - *30,000 40,000 *50,000 60,000 70,000 | - 432.00 576.00 610.00 732.00 854.00 | 216 156 120 108 96 91 | 20,000 30,000 40,000 50,000 60,000 70,000 | 432.00 468.00 480.00 540.00 576.00 637.00 | D144 | 30,000 |
| Worcester.....Mass. | Chicago.....Ill. | 838-J | Plastic Sheets, Synthetic | 100 | - - - - *70,000 | - - - - 700.00 | 210 151 117 105 95 89 | 20,000 30,000 40,000 50,000 60,000 70,000 | 420.00 453.00 468.00 525.00 558.00 623.00 | A162 (Class 35 77750 NMFC) | 20,000 |
| Boston.....Mass. | Chicago.....Ill. | 875-D | Rubber Articles | 296 | *15,000 20,000 30,000 40,000 50,000 60,000 70,000 | 444.00 592.00 888.00 1184.00 1480.00 1776.00 2072.00 | - 213 154 118 106 95 90 | - 20,000 30,000 40,000 50,000 60,000 70,000 | 426.00 462.00 472.00 530.00 570.00 630.00 | B212 | 16,000 |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|-----------------------|-------------------|----------------|------------------------------------|--------------|----------|---------------------------|--------------------|----------|---------------------------|--|------------------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Boston.....Mass. | Chicago.....Ill. | 965-H | Tea | 191 | - | \$ - | 213 | 20,000 | \$ 426.00 | A209 (Class 45 41010 NMPC) | 20,000 |
| | St. Louis.....Mo. | | | | *30,000 | 573.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 764.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 955.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 1146.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 1337.00 | 90 | 70,000 | 630.00 | | |
| | | | | 210 | - | - | 238 | 20,000 | 476.00 | A234 (Class 45 41010 NMPC) | 20,000 |
| | | | | | *30,000 | 630.00 | 172 | 30,000 | 516.00 | | |
| | | | | | 40,000 | 840.00 | 132 | 40,000 | 528.00 | | |
| | | | | | 50,000 | 1050.00 | 119 | 50,000 | 595.00 | | |
| | | | | | 60,000 | 1260.00 | 106 | 60,000 | 636.00 | | |
| | | | | | 70,000 | 1470.00 | 101 | 70,000 | 707.00 | | |
| Stamford.....Conn. | Chicago.....Ill. | 1010 | Typewriter or Typewriter Parts | 254 | *24,000 | 609.60 | 207 | 20,000 | 414.00 | C233 | 18,000 |
| | | | | | 30,000 | 762.00 | 150 | 30,000 | 450.00 | | |
| | | | | | 40,000 | 1016.00 | 115 | 40,000 | 460.00 | | |
| | | | | | 50,000 | 1270.00 | 104 | 50,000 | 520.00 | | |
| | | | | | 60,000 | 1524.00 | 92 | 60,000 | 552.00 | | |
| | | | | | 70,000 | 1778.00 | 87 | 70,000 | 609.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 1015-D | Valves, Brass, Bronze or Copper | 194 | - | - | 213 | 20,000 | 426.00 | B168 B147 (Class 40, 35 Item 1020) | 23,000 30,000 |
| | | | | | *30,000 | 582.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 776.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 970.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 1164.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 1358.00 | 90 | 70,000 | 630.00 | | |
| Westchester.....Mass. | Chicago.....Ill. | 1030-B | Wheels, grinding, alundum | 160 | - | - | 210 | 20,000 | 420.00 | A183 (Class 35 Item 80 NMPC) | 20,000 |
| | | | | | *30,000 | 480.00 | 151 | 30,000 | 453.00 | | |
| | | | | | 40,000 | 640.00 | 117 | 40,000 | 468.00 | | |
| | | | | | 50,000 | 800.00 | 105 | 50,000 | 525.00 | | |
| | | | | | 60,000 | 960.00 | 993 | 60,000 | 558.00 | | |
| | | | | | 70,000 | 1120.00 | 89 | 70,000 | 623.00 | | |
| | St. Louis.....Mo. | | | 186 | - | - | 235 | 20,000 | 470.00 | A205 Class 35 Item 80 NMPC) | 20,000 |
| | | | | | *30,000 | 558.00 | 170 | 30,000 | 510.00 | | |
| | | | | | 40,000 | 744.00 | 131 | 40,000 | 524.00 | | |
| | | | | | 50,000 | 930.00 | 117 | 50,000 | 585.00 | | |
| | | | | | 60,000 | 1116.00 | 104 | 60,000 | 624.00 | | |
| | | | | | 70,000 | 1302.00 | 99 | 70,000 | 693.00 | | |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|-------------------|-------------------|----------------|---|--------------|----------|---------------------------|--------------------|----------|---------------------------|---|------------------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Boston.....Mass. | St. Louis.....Mo. | 1118-F | Boot or Shoe Factory Supplies | 166 | - | \$ - | 238 | 20,000 | \$ 476.00 | C204 | 30,000 |
| | | | | | *30,000 | 498.00 | 172 | 30,000 | 516.00 | | |
| | | | | | 40,000 | 664.00 | 132 | 40,000 | 528.00 | | |
| | | | | | 50,000 | 830.00 | 119 | 50,000 | 595.00 | | |
| | | | | | 60,000 | 996.00 | 106 | 60,000 | 636.00 | | |
| | | | | | 70,000 | 1162.00 | 101 | 70,000 | 707.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 1136-S | Candy or Confectionery | 101 | - | - | 213 | 20,000 | 426.00 | F121 | 28,000 |
| | | | | | *36,000 | 363.60 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 404.00 | 118 | 40,000 | 472.00 | | |
| | | | | | *50,000 | 490.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 588.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 686.00 | 90 | 70,000 | 630.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 1152-Q | Drugs, Medicines, Chemicals | 127 | - | - | 213 | 20,000 | 426.00 | C137 | 24,000 |
| | | | | | *30,000 | 381.00 | 154 | 30,000 | 462.00 | | |
| | | | | | 40,000 | 508.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 635.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 762.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 889.00 | 90 | 70,000 | 630.00 | | |
| Boston.....Mass. | St. Louis.....Mo. | 1152-Q | Drugs, Medicines, Chemicals | 147 | - | - | 238 | 20,000 | 476.00 | C158 | 24,000 |
| | | | | | *30,000 | 441.00 | 172 | 30,000 | 516.00 | | |
| | | | | | 40,000 | 588.00 | 132 | 40,000 | 528.00 | | |
| | | | | | 50,000 | 735.00 | 119 | 50,000 | 595.00 | | |
| | | | | | 60,000 | 882.00 | 106 | 60,000 | 636.00 | | |
| | | | | | 70,000 | 1029.00 | 101 | 70,000 | 707.00 | | |
| Meriden.....Conn. | Chicago.....Ill. | 1213 | Magazines or Periodicals Magazine Parts or Sections | 146 | - | - | 207 | 20,000 | 414.00 | K158 K129 (Class 35 & 35P Item 250) | 20,000 32,000 |
| | | | | | *30,000 | 438.00 | 150 | 30,000 | 450.00 | | |
| | | | | | 40,000 | 584.00 | 115 | 40,000 | 460.00 | | |
| | | | | | - | - | 104 | 50,000 | 520.00 | | |
| | | | | | *60,000 | 636.00 | 92 | 60,000 | 552.00 | | |
| | | | | | *70,000 | 644.00 | 87 | 70,000 | 609.00 | | |
| | St. Louis.....Mo. | | | 161 | - | - | 232 | 20,000 | 464.00 | K178 K154 (Class 35 & 35P Item 250) | 20,000 32,000 |
| | | | | | *30,000 | 483.00 | 168 | 30,000 | 504.00 | | |
| | | | | | 40,000 | 644.00 | 129 | 40,000 | 516.00 | | |
| | | | | | - | - | 116 | 50,000 | 580.00 | | |
| | | | | | *60,000 | 714.00 | 103 | 60,000 | 618.00 | | |
| | | | | | *70,000 | 721.00 | 98 | 70,000 | 686.00 | | |

| FROM | TO | ITEM NUMBER | BRIEF COMMODITY DESCRIPTION | PRESENT RAIL | | | PROPOSED NEW HAVEN | | | E.C.M.C.A. PRESENT | |
|------------------|-------------------|----------------|---|--------------|----------|---------------------------|--------------------|----------|---------------------------|------------------------------------|----------|
| | | | | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. | CHARGE PER SHIPMENT | RATE | MIN. WT. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Boston.....Mass. | Chicago.....Ill. | 1225-F | Soda, Bi-Sulphite of Soda, Hypo-Sulphite of Soda, Sulphite of | 117 | - | \$ - | 213 | 20,000 | \$ 426.00 | C137 | 25,000 |
| | | | | | - | - | 154 | 30,000 | 462.00 | | |
| | | | | | *40,000 | 468.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 585.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 702.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 819.00 | 90 | 70,000 | 630.00 | | |
| | St. Louis.....Mo. | | | 135 | - | - | 238 | 20,000 | 476.00 | C158 | 25,000 |
| | | | | | - | - | 172 | 30,000 | 516.00 | | |
| | | | | | *40,000 | 540.00 | 132 | 40,000 | 528.00 | | |
| | | | | | 50,000 | 675.00 | 119 | 50,000 | 595.00 | | |
| | | | | | 60,000 | 810.00 | 106 | 60,000 | 636.00 | | |
| | | | | | 70,000 | 945.00 | 101 | 70,000 | 707.00 | | |
| Boston.....Mass. | Chicago.....Ill. | 1230-F | Starch; NOIRN | 102 | - | - | 213 | 20,000 | 426.00 | A162 Class 35 87690 NMPC) | 20,000 |
| | | | | | - | - | 154 | 30,000 | 462.00 | | |
| | | | | | *40,000 | 408.00 | 118 | 40,000 | 472.00 | | |
| | | | | | 50,000 | 510.00 | 106 | 50,000 | 530.00 | | |
| | | | | | 60,000 | 612.00 | 95 | 60,000 | 570.00 | | |
| | | | | | 70,000 | 714.00 | 90 | 70,000 | 630.00 | | |

EXPLANATION OF REFERENCE MARKS:

- A - Class rates per the National Motor Freight Classification No. A-4, MF-I.C.C. No. 1, and The Eastern Central Motor Carriers Association, Inc., Agent, Class Tariff 31-C, MF-I.C.C. No. A-168.
- B - Class rates per The Eastern Central Motor Carriers Association, Inc., Agent, Exceptions Tariff 36-A, MF-I.C.C. No. A-156.
- C - Commodity rates per The Eastern Central Motor Carriers Association, Inc., Agent, Tariff 15-L, MF-I.C.C. No. A-159.
- X - Applies from Cambridge, Mass. only.
- D - Commodity rates per The Eastern Central Motor Carriers Association, Inc., Agent, Tariff 43, MF-I.C.C. No. A-164.
- E - Class rates per The Eastern Central Motor Carriers Association, Inc., Agent, Class Tariff 31-C, MF-I.C.C. No. A-168.
- F - Commodity rate per The Eastern Central Motor Carriers Association, Inc., Agent, Tariff 38-A, MF-I.C.C. No. A-154.
- * - Indicates minimum weight published in the item.

[fol. 887]

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENTS' EXHIBIT 40

I. & S. DOCKET NO. 7131
WITNESS _____

STATEMENT

SHOWING ARTICLES NAMED IN RAIL UNIFORM CLASSIFICATION
NO. 5, TRAFFIC EXECUTIVE ASSOCIATION - EASTERN RAILROADS,
I.C.C. NO. A-5 (FLINT SERIES), TAKING A CARLOAD RATING OF
CLASS 20 OR LOWER

| ITEM NO. | ABBREVIATED DESCRIPTION OF ARTICLE | CARLOAD RATING (CLASS) | MINIMUM WEIGHT (POUNDS) |
|----------|---|------------------------------|-------------------------------|
| 2000 | ABRASIVES: | | |
| 2020 | Alundum, corundum, emery or other natural or synthetic abrasive material consisting chiefly of aluminum oxide or silicon carbide: | | |
| 2050 | Refuse, including broken wheels, wheel stubs or wheel grindings | 20 | 50,000 |
| 6345 | Aplite rock, crushed or ground | 17½ | 80,000 |
| 6390 | ASBESTOS: | | |
| 6590 | Sand | 17½ | 50,000 |
| 6670 | Ash, fly | 17½ | 50,000 |
| 6680 | Ash, volcanic, crude or ground | 17½ | 60,000 |
| 6690 | ASHES: Bagasse, Cactus, Cotton boll, etc. | 20 | 40,000 |
| 6770 | Ashes or cinders, coal | 17½ | 50,000 |
| 6775 | Ashes or cinders, coal, mixed with crushed or ground brick | 17½ | 50,000 |
| 6780 | ASPHALT, PITCH OR TAR: | | |
| 6790 | Asphalt (asphaltum), natural, by-product or petroleum, liquid | 20 | 40,000 |
| 6800 | Asphalt (asphaltum), natural, by-product or petroleum, solid | 20 | 40,000 |
| 6890 | Tar or pitch, coal or petroleum | 20 | 40,000 |
| 9370 | Bagasse (crushed sugar cane refuse); bagasse pith or sugar cane pith, dehydrated; other than dust or flour | 17½ | 36,000 |
| 11150 | BLACKS, DRY, NOT ACTIVATED, NOT DYES NOR DYESTUFFS: | | |
| 11220 | Fertilizer blacks | 20 | 40,000 |
| 11350 | Blood, dried, not human blood nor blood plasma | 20 | 40,000 |
| 13320 | Bone, charred filtering (animal charcoal), spent | 20 | 40,000 |
| 15170 | BRICK, BLOCKS, SLABS, TILE OR RELATED ARTICLES: | | |
| 15180 | Beams, girders or joists, structural | 20 | 50,000 |
| 15190 | Blocks, building, hollow, or briquettes, dolomite, slag or cinders and Portland cement combined | 17½ | 60,000 |
| 15200 | Blocks, rings or saddles, condensing or tower packing | 17½ | 60,000 |
| 15210 | Blocks or tubes, segment sewer, aluminum oxide or vitrified clay | 17½ | 60,000 |
| 15220 | Brick, building, common | 17½ | 60,000 |
| 15230 | Brick, crushed or ground | 17½ | 60,000 |
| 15250 | Brick, fire, including fire brick shapes | 20 | 60,000 |
| 15300 | Brick, lead, salt or zinc glazed | 17½ | 60,000 |
| 15320 | Cribbing, concrete | 17½ | 60,000 |
| 15330 | Fire clay or shale, ground fire brick and water combined (unshaped plastic fire brick) | 20 | 60,000 |
| 15340 | Furnace or kiln lining or high temperature bonding mortar or cement, noibn | 20 | 60,000 |
| 15350 | Guard rails, highway, metal reinforced concrete, consisting of anchor block, posts and rails | 20 | 50,000 |
| 15370 | Jackets pipe line (river clamps), metal reinforced concrete | 20 | 50,000 |
| 15390 | Piling, cement or concrete | 20 | 50,000 |
| 15400 | Poles, electric wire, cement or concrete | 20 | 50,000 |
| 15410 | Posts, fence, cement or concrete | 17½ | 60,000 |
| 15420 | Posts, highway marker, cement or concrete | 17½ | 60,000 |
| 15430 | Posts, noibn, cement or concrete | 17½ | 60,000 |

| | | | |
|-------|---|-----|--------|
| 13320 | Bone, charred filtering (animal charcoal), spent | 20 | 40,000 |
| 15170 | BRICK, BLOCKS, SLABS, TILE OR RELATED ARTICLES: | 20 | 40,000 |
| 15180 | Beams, girders or joists, structural | 20 | 50,000 |
| 15190 | Blocks, building, hollow, or briquettes, dolomite, slag or cinders and Portland cement combined | 17½ | 60,000 |
| 15200 | Blocks, rings or saddles, condensing or tower packing | 17½ | 60,000 |
| 15210 | Blocks or tubes, segment sewer, aluminum oxide or vitrified clay | 17½ | 60,000 |
| 15220 | Brick, building, common | 17½ | 60,000 |
| 15230 | Brick, crushed or ground | 17½ | 60,000 |
| 15250 | Brick, fire, including fire brick shapes | 20 | 60,000 |
| 15300 | Brick, lead, salt or zinc glazed | 17½ | 60,000 |
| 15320 | Cribbing, concrete | 17½ | 60,000 |
| 15330 | Fire clay or shale, ground fire brick and water combined (unshaped plastic fire brick) | 20 | 60,000 |
| 15340 | Furnace or kiln lining or high temperature bonding mortar or cement, noibn | 20 | 60,000 |
| 15350 | Guard rails, highway, metal reinforced concrete, consisting of anchor block, posts and rails | 20 | 50,000 |
| 15370 | Jackets pipe line (river clamps), metal reinforced concrete | 20 | 50,000 |
| 15390 | Piling, cement or concrete | 20 | 50,000 |
| 15400 | Poles, electric wire, cement or concrete | 20 | 50,000 |
| 15410 | Posts, fence, cement or concrete | 17½ | 60,000 |
| 15420 | Posts, highway marker, cement or concrete | 17½ | 60,000 |
| 15430 | Posts, noibn, cement or concrete | 17½ | 60,000 |
| 15470 | Supports or props, mine, concrete | 20 | 50,000 |
| 15490 | Ties, railroad, cement or concrete, metal reinforced | 20 | 50,000 |
| 15510 | Tile, building, hollow, lead, salt or zinc glazed or plain | 17½ | 60,000 |
| 15520 | Tile or slabs, building or roofing, metal reinforced concrete: Without glass insertions or without insulation | 17½ | 60,000 |
| 15775 | Brucite and dolomite combined: Deadburned | 20 | 60,000 |
| 15860 | BUILDING OR PAVING MATERIALS, MISCELLANEOUS: | | |
| 15880 | Asphalt, clay and Portland cement, unmixed | 20 | 40,000 |
| 15890 | Asphalt composition paving or flooring planks | 20 | 40,000 |
| 15900 | Asphalt flooring compound, noibn, solid (mastic blocks) | 20 | 40,000 |
| 15950 | Blocks, paving, asphalt composition containing not in excess of 10% asphalt by weight | 17½ | 60,000 |
| 16010 | Cinders: | | |
| 16020 | Clay, shale, slate or volcanic (not pumice stone), or sintered clay aggregate | 17½ | 60,000 |
| 20455 | CARBON: | | |
| 20470 | Briquettes, noibn | 17½ | 60,000 |
| 20580 | Petroleum (petroleum coke), not ground | 17½ | 60,000 |
| 21650 | Cement clinker grinding compound, liquid | 20 | 74,000 |
| 21660 | CEMENT, LIME OR PLASTER: | | |
| 21700 | Cement flue dust | 20 | 40,000 |
| 21720 | Lime sludge or waste, dried: | | |
| | In barrels or boxes, or in cloth or 5-ply paper bags | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |

| ITEM NO. | ABBREVIATED DESCRIPTION OF ARTICLE | CARLOAD RATING (CLASS) | MINIMUM WEIGHT (POUNDS) |
|----------|---|------------------------------|-------------------------------|
| 21660 | CEMENT, LIME OR PLASTER: (Concluded) | | |
| 21750 | Plaster, land | 20 | 40,000 |
| 21980 | CHEMICALS: | | |
| 22160 | Aluminum: | | |
| 22290 | Sulphate, or paper makers' alum: | | |
| | Liquid, in tank cars, Rule 35 | 20 | --- |
| 22320 | Ammoniacal liquor or aqua ammonia, noibn: | | |
| | In bulk in barrels; also CL, in tank cars, Rule 35 | 20 | 40,000 |
| 22330 | Ammonium: | | |
| 22450 | Phosphate, monobasic crude | 20 | 40,000 |
| 22470 | Sulphate: In bulk in bags, barrels or steel pails, also CL, in bulk in packages, or in bulk | 20 | 40,000 |
| 22480 | Sulphate nitrate (leumasalpeter): In bulk in bags, barrels or boxes; also CL, in bulk | 20 | 40,000 |
| 22670 | Barium: | | |
| 22800 | Sulphate, crude (barytes), not ground | 20 | 80,000 |
| 23010 | Calcium: | | |
| 23130 | Cyanamid | 20 | 40,000 |
| 23170 | Nitrate: In double bags, in bulk in barrels or in package 51 | 20 | 40,000 |
| 24870 | Potassium (potash): | | |
| 24890 | Alkali salts, crude, dry | 20 | 40,000 |
| 24900 | Beet or cane residuum | 20 | 40,000 |
| 24950 | Carbonate (pearlash): | | |
| | Crude, in bulk in barrels; also CL, in tank cars, Rule 35 | 20 | 45,000 |
| 25010 | Hartsalz, kainit, manure salts, double manure salts, sulphate of magnesium-potassium or sylvinit | 20 | 40,000 |
| 25040 | Muriate (potassium chloride): In bulk in bags, barrels, boxes or steel pails; also CL, in bulk | 20 | 40,000 |
| 25050 | Nitrate (saltpeter): Crude | 20 | 40,000 |
| 25090 | Potash, wood, crude | 20 | 40,000 |
| 25140 | Sulphate: In bulk in bags, barrels, boxes or steel pails, also CL, in bulk | 20 | 40,000 |
| 25160 | Tobacco crystals (tobacco-potash salts) | 20 | 40,000 |
| 25290 | Sodium (soda): | | |
| 25630 | Nitrate (chili saltpeter): In bulk in barrels, boxes or steel pails; also CL, in bulk or in paper bags, see Rule 40, Section 10 (b) | 20 | 40,000 |
| 25640 | Nitrate of soda-potash: In bulk in bags, barrels or boxes; also CL, in bulk | 20 | 40,000 |
| 25660 | Nitre cake (crude bisulphate of soda): In bulk in bags, barrels or boxes; also CL, in bulk | 20 | 40,000 |
| 26780 | Chlorinated phenol petroleum solution (wood preservative, liquid), not exceeding 5% of chlorinated phenol by | | |

| | | | |
|-------|---|-----|--------|
| 24890 | Alkali salts, crude, dry | 20 | 40,000 |
| 24900 | Beet or cane residuum | 20 | 40,000 |
| 24950 | Carbonate (pearlash): | | |
| | Crude, in bulk in barrels; also CL, in tank cars, Rule 35 | 20 | 45,000 |
| 25010 | Hartsalts, kainit, manure salts, double manure salts, sulphate of magnesium-potassium or sylvinit | 20 | 40,000 |
| 25040 | Muriate (potassium chloride): In bulk in bags, barrels, boxes or steel pails; also CL, in bulk | 20 | 40,000 |
| 25050 | Nitrate (saltpeter): Crude | 20 | 40,000 |
| 25090 | Potash, wood, crude | 20 | 40,000 |
| 25140 | Sulphate: In bulk in bags, barrels, boxes or steel pails, also CL, in bulk | 20 | 40,000 |
| 25160 | Tobacco crystals (tobacco potash salts) | 20 | 40,000 |
| 25290 | Sodium (soda): | | |
| 25630 | Nitrate (chili saltpeter): In bulk in barrels, boxes or steel pails; also CL, in bulk or in paper bags, see Rule 40, Section 10 (b) | 20 | 40,000 |
| 25640 | Nitrate of soda-potash: In bulk in bags, barrels or boxes; also CL, in bulk | 20 | 40,000 |
| 25660 | Nitre cake (crude bisulphate of soda): In bulk in bags, barrels or boxes; also CL, in bulk | 20 | 40,000 |
| 26780 | Chlorinated phenol petroleum solution (wood preservative, liquid), not exceeding 5% of chlorinated phenol by weight; In bulk in barrels; also CL, in tank cars, Rule 35, estimated weight 8.7 pounds per gallon | 20 | 40,000 |
| 27055 | CLAYS, CONCENTRATES, EARTHS OR ORES: | | |
| 27100 | Antimony sulphide, crude (crude antimony ore) | 17½ | 50,000 |
| 27110 | Bauxite (bauxite) ore | 20 | 56,000 |
| 27190 | Clay, fire, crude or ground | 20 | 60,000 |
| 27200 | Clay, noibn, crude | 20 | 60,000 |
| 27210 | Clay, noibn, crushed, ground or pulverized | 20 | 60,000 |
| 27240 | Clay or sand, noibn: Granulated or pulverized, with not over 3½% other ingredients admixed but not processed for decolorizing, filtering or water softening | 17½ | 80,000 |
| 27270 | Earth (soil), noibn | 20 | 40,000 |
| 27320 | Humus | 20 | 40,000 |
| 27350 | Iron ore, hydrated (bog ore, red ore, or yellow ore), not ground | 20 | 60,000 |
| 27360 | Iron ore, noibn, crude, not ground | 20 | 60,000 |
| 27370 | Kyanite or sillimanite ore | 20 | 60,000 |
| 27390 | Lead ore | 20 | 60,000 |
| 27430 | Pyrites, iron | 20 | 50,000 |
| 27440 | Pyrites cinder, refuse or dross, copper (purple ore) or iron | 20 | 56,000 |
| 27445 | Pyrophyllite, crude: Not ground; Ground | 20 | 60,000 |
| 27460 | Sericite, crude, ground or pulverized | 20 | 60,000 |
| 27470 | Shale, crude | 17½ | 60,000 |
| 27500 | Topaz rock, crude, crushed, ground or pulverized | 20 | 60,000 |

[fol. 889]

| ITEM NO. | ABBREVIATED DESCRIPTION OF ARTICLE | CARLOAD RATING (CLASS) | MINIMUM WEIGHT (POUNDS) |
|----------|---|------------------------------|-------------------------------|
| 27055 | CLAYS, CONCENTRATES, EARTHS OR ORES: (Concluded) | | |
| 27510 | Tripoli | 20 | 60,000 |
| 27520 | Vermiculite, crude (vermiculite ore) | 17½ | 60,000 |
| 27540 | Zinc ore | 20 | 60,000 |
| 28640 | Coal, anthracite, bituminous, blacksmith, cannel or lignite, ground or pulverized | 20 | 50,000 |
| 28740 | Cocoa bean shells, ground or not ground: In bulk in bags, barrels or boxes | 20 | 40,000 |
| 28800 | COKE: | | |
| 28805 | Coke from the liquefaction of coal | 17½ | 60,000 |
| 28810 | Coke, gas house: In bags, barrels or boxes | 17½ | 50,000 |
| 28830 | Creosote, pitch or tar, not activated carbon | 17½ | 50,000 |
| 28840 | Dust or breeze: In bags, barrels or boxes | 17½ | 50,000 |
| 28980 | CONDUITS, DRAIN TILE, SEWER PIPE, OR RELATED ARTICLES, CEMENT, CLAY, CONCRETE OR EARTHEN: | | |
| 29040 | Conduits, conduit connections or fittings, for under- ground work, clay or terra cotta: Single cell: Not lined, octagonal, square or oblong in shape | 20 | 60,000 |
| 30500 | CONTAINERS, EMPTY, RETURNED: | | |
| | Bottles | | |
| | Bottles, in bottle carriers | 20 | 20,000 |
| | Bottle carriers or boxes, without bottles | 17½ | 25,000 |
| | Hogsheads, barrels, half-barrels, quarter-barrels, sixth-barrels, eighth-barrels and drums | | |
| 30750 | Copper naphthenate petroleum solution (wood preservative, liquid), not exceeding 5% copper naphthenate by weight | 20 | 40,000 |
| 30780 | Coral, crude, not crushed not ground | 20 | 50,000 |
| 31250 | Cottonseed hulls, not ground | 17½ | 36,000 |
| 31260 | Cottonseed hulls, ground (cottonseed hull bran) | 17½ | 40,000 |
| 32810 | Dolomite, roasted (refractory dolomite, in granular form, treated or untreated, clinkered, or burned to a dead state) | 20 | 60,000 |
| 35960 | FARM, DAIRY, GARDEN, LIVE STOCK, ORCHARD OR POULTRY EQUIPMENT: | | |
| 36790 | Staves, cement, silo, grain bin or water tank | 17½ | 60,000 |
| 37030 | FEED, ANIMAL OR POULTRY: | | |
| 37500 | Peanut chaff (peanut skins) | 17½ | 36,000 |
| 37530 | Peanut hulls, crushed or ground | 17½ | 50,000 |
| 37540 | Peanut hulls, stems or roots, not crushed nor ground | 17½ | 36,000 |
| 37590 | Rice hulls, ground | 17½ | 50,000 |
| 37600 | Rice hulls, not ground (rice chaff) | 20 | 36,000 |
| 37640 | Soybean hulls: Ground | 17½ | 40,000 |
| | Not Ground | 17½ | 36,000 |
| 37710 | Feldspar | 20 | 60,000 |
| 37780 | Fertilizer raw bone meal, containing not less than 4% ammonia and not over 50% of bone phosphate of lime | 20 | 40,000 |
| 37800 | | | |

| | | | |
|-------|---|-----|--------|
| | sixth-barrels, eighth-barrels and drums | | |
| 30750 | Copper naphthenate petroleum solution (wood preservative, liquid), not exceeding 5% copper naphthenate by weight | 20 | 40,000 |
| 30780 | Coral, crude, not crushed not ground | 20 | 50,000 |
| 31250 | Cottonseed hulls, not ground | 17½ | 36,000 |
| 31260 | Cottonseed hulls, ground (cottonseed hull bran) | 17½ | 40,000 |
| 32810 | Dolomite, roasted (refractory dolomite, in granular form, treated or untreated, clinkered, or burned to a dead state) | 20 | 60,000 |
| 35960 | FARM, DAIRY, GARDEN, LIVE STOCK, ORCHARD OR POULTRY EQUIPMENT: | | |
| 36790 | Staves, cement, silo, grain bin or water tank | 17½ | 60,000 |
| 37030 | FEED, ANIMAL OR POULTRY: | | |
| 37500 | Peanut chaff (peanut skins) | 17½ | 36,000 |
| 37530 | Peanut hulls, crushed or ground | 17½ | 50,000 |
| 37540 | Peanut hulls, stems or roots, not crushed nor ground | 17½ | 36,000 |
| 37590 | Rice hulls, ground | 17½ | 50,000 |
| 37600 | Rice hulls, not ground (rice chaff) | 20 | 36,000 |
| 37640 | Soybean hulls: | | |
| | Ground | 17½ | 40,000 |
| | Not Ground | 17½ | 36,000 |
| 37710 | Feldspar | 20 | 60,000 |
| 37780 | Fertilizer raw bone meal, containing not less than 4% ammonia and not over 50% of bone phosphate of lime | 20 | 40,000 |
| 37800 | Fertilizer materials, having value only for fertilizer purposes or for nitrogen content, viz.: | | |
| | Animal hoofs, horns, horn waste or stumps; | | |
| | Cartridge waste; | | |
| | Felt clippings, scrap or waste; | | |
| | Mustard seed waste; | | |
| | Sewage sludge, dry; | | |
| | Shavings taken from hides during tanning process; | | |
| | Tung nut oil cake or meal; | | |
| | Waste or refuse furs or fur pieces | 20 | 40,000 |
| 37810 | Fertilizing compounds (manufactured fertilizers), noibn, dry | | |
| | CL, in paper bags, see Rule 40, Section 10. (b) | 20 | 40,000 |
| | CL, in bulk in paper lined box cars, paper lining to be furnished and installed by shipper | 20 | 60,000 |
| 38640 | Fish scrap or tankage, noibn, dry, not ground, pulverized nor screened, or acid fish scrap | 20 | 40,000 |
| 42270 | Furfural residue | 20 | 40,000 |
| 45890 | GLASS: | | |
| 45920 | Cullet (broken glass) | 20 | 50,000 |

| ITEM NO. | ABBREVIATED DESCRIPTION OF ARTICLE | CARLOAD RATING (CLASS) | MINIMUM WEIGHT (POUNDS) |
|----------|---|------------------------------|-------------------------------|
| 46805 | Slue, residuum refuse, having value only for fertilizing purposes | 20 | 40,000 |
| 47380 | GRAVEL, SAND, SLAG, SLATE OR STONE; | | |
| 47390 | Chatt (lead or zinc mine refuse); | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47410 | Ganister rock, ground or not ground | 17½ | 60,000 |
| 47420 | Gravel, noibn; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47430 | Perlite rock, crude, broken, crushed or ground | 17½ | 50,000 |
| 47440 | Pumice aggregate in its natural state except that it may be crushed (not ground) or graded to size but not cleaned or further processed, having value only as a concrete aggregate | 17½ | 80,000 |
| 47444 | Rock, bituminous, burned and crushed or ground | 17½ | 60,000 |
| 47450 | Rock, bituminous asphalt | 17½ | 60,000 |
| 47455 | Sand, mixed with clay, with crushed stone and gravel or pebbles; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk, Rule 5, Section 3(a) not to apply | 16 | 80,000 |
| 47460 | Sand, noibn; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47470 | Slag, noibn, granulated or lump; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47480 | Slag, basic (phosphate), ground or pulverized | 20 | 60,000 |
| 47490 | Slag, magnesium, having value for reclamation of metal, actual value not exceeding one cent per pound | 17½ | 80,000 |
| 47510 | Slate, crushed, ground, dust or scrap | 17½ | 50,000 |
| 47540 | Soapstone or Talc; | | |
| 47550 | Soapstone, crude, not ground nor pulverized (not blocks nor slabs) | 17½ | 70,000 |
| 47560 | Soapstone, ground or pulverized, other than soapstone testing not less than 99% through 200 mesh screen | 17½ | 70,000 |
| 47570 | Soapstone or talc, blocks, pieces or slabs, rough quarried or not further finished than sawed or chipped on four sides | 20 | 50,000 |
| 47580 | Soapstone or talc, testing not less than 99% through 200 mesh screen, or talc, ground or pulverized; | | |
| | CL, in packages or in bulk | 20 | 60,000 |
| 47610 | Talc tailings | 17½ | 70,000 |
| 47620 | Stone; cast or natural, noibn; | | |
| 47630 | Granite, marble, limestone, sandstone, coquina or cast stone; | | |
| 47660 | Blocks, pieces or slabs, rough quarried, or not further finished than chipped, pitched, sawed or scabbled on | | |

| | | | |
|-------|---|-----|--------|
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47470 | Slag, noibn, granulated or lump; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47480 | Slag, basic (phosphate), ground or pulverized | 20 | 60,000 |
| 47490 | Slag, magnesium, having value for reclamation of metal, actual value not exceeding one cent per pound | 17½ | 80,000 |
| 47510 | Slate, crushed, ground, dust or scrap | 17½ | 50,000 |
| 47540 | Soapstone or Talc; | | |
| 47550 | Soapstone, crude, not ground nor pulverized (not blocks nor slabs) | 17½ | 70,000 |
| 47560 | Soapstone, ground or pulverized, other than soapstone testing not less than 99% through 200 mesh screen | 17½ | 70,000 |
| 47570 | Soapstone or talc, blocks, pieces or slabs, rough quarried or not further finished than sawed or chipped on four sides | 20 | 50,000 |
| 47580 | Soapstone or talc, testing not less than 99% through 200 mesh screen, or talc, ground or pulverized; | | |
| | CL, in packages or in bulk | 20 | 60,000 |
| 47610 | Talc tailings | 17½ | 70,000 |
| 47620 | Stone, cast or natural, noibn; | | |
| 47630 | Granite, marble, limestone, sandstone, coquina or cast stone; | | |
| 47660 | Blocks, pieces or slabs, rough quarried, or not further finished than chipped, pitched, sawed or scabbled on four sides | 20 | 50,000 |
| 47680 | Stone, bridge, curbing, flagging, paving or rubble | 17½ | 60,000 |
| 47700 | Stone, coquina, broken, crushed or ground; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47705 | Stone, coquina, rough building blocks | 20 | 50,000 |
| 47715 | Stone, natural, chips, crushed, dust, ground, powdered or waste, noibn; | | |
| | CL, in packages | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47730 | Tailings, asbestos ore, ground or pulverized | 20 | 60,000 |
| 47740 | Tailings, iron ore, having no value for the further ex- traction of metal; | | |
| | In bags, barrels or boxes | 17½ | 60,000 |
| | In bulk | 13 | 80,000 |
| 47750 | Wollastonite, testing not less than 99% through 200 mesh screen, or ground or pulverized | 20 | 60,000 |
| 47760 | Wollastonite tailings | 17½ | 70,000 |
| 52790 | Nuts, tung nut | 20 | 40,000 |
| 52820 | Ice, packed in absorbent material | 17½ | 40,000 |
| 57580 | LUMBER, VENEER, OR FOREST PRODUCTS; | | |
| 57890 | Fuel wood or pulpwood | 20 | 36,000 |
| 57970 | Kindling, fire, wood | 20 | 36,000 |
| 58000 | Logs or flitches, native wood, Canadian wood or Mexican pine | 20 | 36,000 |

[fol. 891]

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| ITEM NO. | ABBREVIATED DESCRIPTION OF ARTICLE | CARLOAD RATING (CLASS) | MINIMUM WEIGHT (POUNDS) |
|----------|--|------------------------------|-------------------------------|
| 67410 | Magnesite; Dead burnt | 20 | 60,000 |
| 67420 | Magnesite, crude | 17½ | 60,000 |
| 67620 | Manure, animal, bird, dog, fowl or guano; In bulk in bags or boxes or sift-proof boxes | 20 | 40,000 |
| | CL., in bulk | 20 | 60,000 |
| 67670 | Marl | 20 | 40,000 |
| 67750 | Meal, hoof, horn or mowrah, having value only for fertilizing purposes | 20 | 40,000 |
| 70050 | Mussel meat, not edible, dry | 20 | 40,000 |
| 70850 | Nozzles, sleeves or stopper heads, clay | 20 | 60,000 |
| 72305 | OILS, NOT NAMED IN OTHER MORE SPECIFIC GROUPS: | | |
| 72400 | Creosote (dead oil of coal tar or wood tar), including distillate or solution (creosote oil and tar) | | |
| | In bulk in barrels; also CL. in tank cars, Rule 35 | 20 | 40,000 |
| 73380 | OUTFITS: | | |
| 73510 | Bridge builders' erection, consisting of frame, boom rigging, engine, tanks, tools and fuel, moved on own wheels, but not under own power, actual weight of outfit, with a minimum weight of 140,000 lbs. | 17½ | --- |
| 73705 | Diesel electric generating unit, moved on own wheels, but not under own power, actual weight of car, trucks and contents, less 25%, with minimum net weight charge of 130,000 lbs. | 20 | --- |
| 77150 | Peat briquettes | 20 | 40,000 |
| 77380 | Phenol waste liquor, containing not to exceed 5% phenol, in tank cars, Rule 35 | 20 | --- |
| 77390 | Phosphate rock, crude, ground or pulverized | 17½ | 80,000 |
| 77400 | Phosphatic clay or sand, ground or not ground | 17½ | 80,000 |
| 77410 | Phosphatic fertilizer solution, containing not more than 58% of phosphoric anhydride by weight, shipper to so certify on bill of lading, ammoniated or not ammoniated, in tank cars, Rule 35 | 20 | --- |
| 79405 | POSTS: | | |
| 79430 | Lamp, cement or concrete; Without metal trimmings | 17½ | 60,000 |
| 79480 | Poultry or pigeon grit; In cans or cartons in barrels or boxes | 20 | 50,000 |
| | In bulk in bags, barrels or boxes, also CL. in bulk | 17½ | 60,000 |
| 80835 | RAILWAY EQUIPMENT OR MATERIAL: | | |
| 82090 | Locomotives, locomotive tenders or locomotives and tenders combined, compressed air, electric, gas, gasoline, oil-electric or steam, moved on own wheels, but not under own power, actual weight, subject to minimum weight of 60,000 lbs. for standard gauge or 60,000 lbs. for narrow gauge locomotives | | |

| | | | |
|-------|---|-----|--------|
| | rigging, engine, tanks, tools and fuel, moved on own wheels, but not under own power, actual weight of outfit, with a minimum weight of 140,000 lbs. | 17½ | --- |
| 73705 | Diesel electric generating unit, moved on own wheels, but not under own power, actual weight of car, trucks and contents, less 25%, with minimum net weight charge of 130,000 lbs. | 20 | --- |
| 77150 | Peat briquettes | 20 | 40,000 |
| 77380 | Phenol waste liquor, containing not to exceed 5% phenol, in tank cars, Rule 35 | 20 | --- |
| 77390 | Phosphate rock, crude, ground or pulverized | 17½ | 80,000 |
| 77400 | Phosphatic clay or sand, ground or not ground | 17½ | 80,000 |
| 77410 | Phosphatic fertilizer solution, containing not more than 58% of phosphoric anhydride by weight, shipper to so certify on bill of lading, ammoniated or not ammoniated, in tank cars, Rule 35 | 20 | --- |
| 79405 | POSTS: | | |
| 79430 | Lamp, cement or concrete; Without metal trimmings | 17½ | 60,000 |
| 79480 | Poultry or pigeon grit: | | |
| | In cans or cartons in barrels or boxes | 20 | 50,000 |
| | In bulk in bags, barrels or boxes, also CL, in bulk | 17½ | 60,000 |
| 80835 | RAILWAY EQUIPMENT OR MATERIAL: | | |
| 82090 | Locomotives, locomotive tenders or locomotives and tenders combined, compressed air, electric, gas, gasoline, oil-electric or steam, moved on own wheels, but not under own power, actual weight, subject to minimum weight of 60,000 lbs. for standard gauge or 50,000 lbs. for narrow gauge locomotives, locomotive tenders or locomotives and tenders combined | 20 | --- |
| 83440 | Rock, borate, calcined | 20 | 60,000 |
| 83450 | Rock, borate, crude | 20 | 60,000 |
| 84590 | Sand, foundry core, containing 5% or less of phenolic resin | 17½ | 80,000 |
| 86040 | SHELLS: | | |
| 86050 | Abalone, crude, not crushed nor ground | 20 | 50,000 |
| 86060 | Clam, coquina, mussel, oyster or sea, noibn, crushed or ground: | | |
| | In containers in barrels or boxes | 20 | 50,000 |
| | In bulk in bags, barrels or boxes; also CL, in bulk | 17½ | 60,000 |
| 86070 | Clam, coquina, mussel or oyster, not crushed nor ground | 20 | 50,000 |
| 86100 | Crab, crushed or ground (crab shell meal) | 20 | 50,000 |
| 86120 | Egg | 20 | 50,000 |
| 86840 | Sludge, acid (an unrefined waste obtained in the refining of petroleum oil) | 20 | 40,000 |
| 86850 | Sludge, phosphoric acid, in tank cars, Rule 35 | 20 | --- |
| 86980 | Sod, chopped or not chopped | 20 | 40,000 |
| 88380 | Sulphate black liquor skimmings, not acidified or otherwise processed liquid | 20 | 50,000 |
| 88390 | Sulphur (brimstone); Crude (not ground or not refined) | 17½ | 80,000 |
| 88450 | Superphosphate (acid phosphate), ammoniated | 20 | 40,000 |
| 88460 | Superphosphate (acid phosphate), other than ammoniated | 20 | 40,000 |

| ITEM NO. | ABBREVIATED DESCRIPTION OF ARTICLE | CARLOAD RATING (CLASS) | MINIMUM WEIGHT (POUNDS) |
|----------|---|------------------------------|-------------------------------|
| 88480 | Syenite, crude or ground | 20 | 60,000 |
| 88670 | Tankage, garbage, dry | 20 | 40,000 |
| 89800 | TOBACCO, UNMANUFACTURED: | | |
| 89880 | Stems, not ground; CL, in bulk | 20 | 60,000 |
| 95125 | WASTE MATERIALS: | | |
| 95260 | Carbide of calcium residue | 20 | 60,000 |
| 95290 | Castor bean hulls or stems, ground or not ground | 20 | 40,000 |
| 95300 | Castor pomace, or castor pomace and cottonseed meal, physically mixed | 20 | 40,000 |
| 95380 | Feather refuse or quill clippings | 20 | 40,000 |
| 95400 | Fertilizer hair waste, having value only for fertilizer purposes or for its nitrogen content | 20 | 40,000 |
| 95410 | Fertilizer synthetic gum or resin scrap, with filler, having value only for fertilizer purposes or for its nitrogen content | 20 | 40,000 |
| 95420 | Fertilizer wool refuse, having value only for fertilizer purposes or for its nitrogen content | 20 | 40,000 |
| 95450 | Glasshouse pots or tank blocks, broken | 20 | 60,000 |
| 95460 | Grape or tartar pomace, dry | 20 | 40,000 |
| 95470 | Grape or tartar pomace, wet | 20 | 40,000 |
| 95550 | Hulls, velvet bean, ground | 17½ | 40,000 |
| 95560 | Hulls, velvet bean, not ground | 17½ | 30,000 |
| 95640 | Meat refuse, non-edible | 20 | 40,000 |
| 95650 | Moss dust (refuse from moss gins or moss factories), having value only for fertilizer, soil conditioning or mulching purposes: | | |
| | In bulk in bags, barrels or boxes | 20 | 60,000 |
| | In bulk, 90% of marked capacity of car but not less than 60,000 lbs. | 20 | --- |
| 95930 | Sugar cake mud (refuse from sugar filter presses) | 20 | 40,000 |
| 95975 | Tobacco dust, refuse, sand or waste; In bulk in bags bales, barrels or boxes; also CL in bulk | 20 | 40,000 |
| 96060 | Waste, lubricating grease, asphalt base, containing not less than 85% asphalt, spent | 20 | 40,000 |
| 96065 | Waste, petroleum refinery sulphide (caustic wash residue, obtained from desulphurization or neutralization of petroleum oil), liquid, in tank cars, Rule 35 | 20 | --- |

[fol. 893]

[fol. 1074] Secretary's Certificate to following transcript
(omitted in printing).

[fol. 1076]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. & S.

Docket No. 7131

In the Matters of:

ALL COMMODITIES—

FROM NEW ENGLAND TO CHICAGO AND ST. LOUIS.

Docket No. 33185

ALL FREIGHT—

CONN., MASS. & R. I. TO CHICAGO & ST. LOUIS.

Docket No. 33193

FREIGHT, ALL KINDS—

MAINE TO CHICAGO & E. ST. LOUIS, ILL.

Docket No. 33202

ALL FREIGHT RATES FROM

NEW ENGLAND TO ILL., IND., MO.

Transcript of Hearing—Tuesday, October 27, 1959

Hearing Room "F"

Interstate Commerce Commission,
Washington, D. C.

Met, pursuant to notice, at 9:30 a.m.

Before: William J. Kane, Examiner.

APPEARANCES:

William Q. Keenan, 54 Meadow Street, New Haven, Connecticut, appearing for Respondent Railroads, including The New Haven Railroad, Respondent.

John A. Daily, 466 Lexington Avenue, New York, New York, appearing for New York Central Railroad Company, Respondent.

[fol. 1077] William J. Taylor, 1138 Transportation Center, Philadelphia, Pennsylvania, appearing for Respondent Railroads, Respondents.

Scott W. Scully, 232 St. John Street, Portland, Maine, appearing for Maine Central Railroad Company, Respondent.

Homer S. Carpenter, 618 Perpetual Building, Washington 4, D. C., appearing for The Eastern Central Motor Carriers Association, Inc., Protestant.

John S. Fessenden, 1111 E Street, N.W., Washington 4, D. C., appearing for The Eastern Central Motor Carriers Association, Inc., Protestant.

John T. Collins, 150 Causeway Street, Boston 14, Mass., appearing for Boston and Maine Railroad, Respondent.

• • • • •

[fol. 1084] H. D. HARTMANN was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name and by whom you are employed.

A. H. D. Hartmann, General Manager, Freight Rates and Divisions, employed by New York, New Haven and Hartford Railroad, 54 Meadow Street, New Haven, Connecticut.

Q. Mr. Hartmann, have you in a mimeographed document of some 65 pages caused to be prepared in question

and answer from the testimony which you desire to tender in this proceeding?

A. I have.

[fol. 1085] Exam. Kane: Just so the Examiner will understand the proposal, this statement of the witness will not be read into the record as such, but will be offered as an exhibit.

Mr. Keenan: Yes, Mr. Examiner.

Exam. Kane: The Commission has adopted that practice, and I believe it is in one of the rules, and I have followed [fol. 1086] that practice in other proceedings where there is a written statement. Rather than read it into the record, I have permitted the parties to offer it as an exhibit, so long as there were no objections to it, and in the light of the understanding now that there is no objection, I see no reason why this statement could not now be offered as Exhibit No. 1.

(Respondent's Exhibit No. 1, Witness Hartmann, was marked for identification.)

OFFERS IN EVIDENCE

Mr. Keenan: I so offer it, if it please the Examiner.

Exam. Kane: It will be accepted as Exhibit No. 1.

(Respondent's Exhibit No. 1, Witness Hartmann, was received in evidence.)

By Mr. Keenan:

Q. Mr. Hartmann, is Exhibit No. 1 the statement of testimony to which you have just referred?

A. Yes, sir.

Mr. Carpenter: May we go off the record?

Exam. Kane: Yes.

(Discussion off the record.)

Mr. Keenan: Mr. Examiner, Exhibit 1 makes reference to exhibits numbered in the exhibit itself, HDH-1 through HDH-25.

I ask that the documents thus identified and attached to Exhibit 1 be identified in evidence as Exhibits 2 through 26.

Exam. Kane: These are the tariff schedules, and these are statistical statements!

[fol. 1087] **Mr. Keenan:** Perhaps the safest way for the record is for me to describe each exhibit and ask to have it numbered.

I offer Tariff 11-C as Exhibit 2.

I offer Supplement 7 to Tariff 11-C as Exhibit 3.

Supplement 8 to Tariff 11-C as Exhibit 4.

Supplement 9 as Exhibit 5.

A two-page document entitled "Section 2 All-commodity rates in Tariff ICC No. F-4501" as Exhibit 6.

A one-page document entitled "Cost per cwt. comparison of Section 2 and Plan III rail rates from Boston" as Exhibit 7.

A one-page document entitled "Interline forwarded New Haven Railroad Manufactured and Miscellaneous Traffic" as Exhibit 8.

A one-page document entitled "Index of Revenues of Class I, II and III carriers by railroads and motor carriers of property compared with national income", Exhibit 9.

A one-page document entitled "Distribution of Intercity Freight Traffic in the United States", Exhibit 10.

A one-page document entitled "Percentage distribution of intercity freight traffic in the United States," Exhibit 11.

An eight-page document, entitled "Appendix E, Docket 15879, Class Rate increases 1931-1957", Exhibit 12.

A two-page document entitled "Total freight revenue, manufactures and miscellaneous freight revenue, freight forwarder freight revenue and l.c.l. freight revenue for the years 1939 to 1957, inclusive", Exhibit 13.

[fol. 1088] A one-page document entitled "Comparison of percent of revenue on manufactured and miscellaneous to total revenues for the Eastern District and the New Haven Railroad", Exhibit No. 14.

A one-page document, "Comparison of percent of revenue on l.c.l. to total revenue for the Eastern District and New Haven Railroad", Exhibit 15.

"Comparison of revenue index on manufactured and miscellaneous and l.c.l. to total revenue for the Eastern District and the New Haven, 1939 to 1957", Exhibit 16.

A one-page "Comparison of revenue index on M&M for the Eastern District and the New Haven Railroad, 1939 to 1957," Exhibit 17.

A one-page "Comparison of Revenue Index for all railroads, Eastern District and New Haven, 1947 to 1957", Exhibit 18.

A one-page comparison of revenue index on l.c.l. for Eastern District and the New Haven, 1939 to 1957, Exhibit 19.

A one page statement showing actual revenue per ton and index for manufactures and miscellaneous, for railroads in the United States and the New Haven for the years 1939 to 1957. Exhibit 20.

A three-page document entitled "Highway weight and size limit", Exhibit 21.

A 19-page document entitled "Statement showing comparison of motor carrier rates to Chicago, Illinois, from [fol. 1089] various points on the New Haven Railroad, with rail box car rates for similar quantities", Exhibit 22.

A one-page document called "Carload traffic, 10,000 pounds or over, rated 71 cents per hundredweight or higher, originating on the New Haven, when destined to Chicago, exclusive of all commodity accounts", Exhibit 23.

A one-page statement showing shipments from New Haven stations to Chicago in Commodity Account 799 and 950, Exhibit 24.

A one-page statement of interline forwarded New Haven Railroad forwarder traffic Account 950, Exhibit 25.

The next exhibit I propose in sequence is not in the stapled set of exhibits that has been distributed, it should be inserted. It is a one-page document entitled "Freight forwarder traffic in box cars moving under Section 1 of I.C.C.-F-4501, from Boston to Chicago for September 2, 1959. Exhibit 26.

Mr. Examiner, I have erred—if the Examiner will pardon me. The testimony will work out best with the exhibit numbering if you number what I have previously proposed

as Exhibit 26 as Exhibit 27, and that you assign the number 26 to a one-page document entitled "Interline forwarded [fol. 1090] New Haven Railroad, manufactured and miscellaneous Account 940", and then insert into the memorandum the document I just described, freight forwarder traffic in box cars, as Exhibit 27.

Exam. Kane: In lieu of 26 as previously identified?

Mr. Keenan: That is right, sir.

Next, a one-page document, statement showing number of cars, weight and revenue on traffic moved under Section 2 of I.C.C.-F-4501, Exhibit 28.

A two-page statement of shipments moving under Plan III for month of August, 1959, Exhibit 29, and a 13-page document entitled "Truck miles, household goods carriers bureau, MC-ICC-71, Exhibit 30.

(Respondent's Exhibit Nos. 2 to 30, incl., Witness Hartmann, were marked for identification.)

[fol. 1098] By Mr. Keenan:

Q. Mr. Hartmann, will you please refer to your Exhibits 23 and 24? Your Exhibit 23, entitled "Carload traffic, 10,000 pounds or over", and Exhibit 24, entitled "Statement showing shipments from New Haven stations." Those, you have said, reflect traffic moving over a six-month period, one statement discusses traffic other than all commodity traffic, [fol. 1099] and Exhibit 24 is confined to all commodity traffic, 799 to 950.

Will you please tell me on an annual basis how much of the traffic described in Exhibits 23 and 24 New Haven has moving on its lines?

A. It would be approximately twice the amount shown there, because that is for a six-month period.

[fol. 1100] By Mr. Keenan:

Q. Now, at page 8 of Exhibit 1, Mr. Hartmann, you stated that the rates under investigation in various weight brackets represent various percentages of Docket 28300. first class.

What, if any, use did you make, Mr. Hartmann, of the Commission's Cost Section, rail box car costs, in constructing the rate scales on the basis of which you published the rates that are under investigation?

A. When consideration was given to meeting this Plan II trailer-on-flatcar publication, the first thing I did was to find out from the Commission's cost figures as to what level of rates could be applied against the 28300, and be equal to or above the fully distributed costs.

I applied that not only on box car traffic, but I applied it on all types of cars, stock cars, refrigerator cars, and so [fol. 1101] forth.

[fol. 1103] Q. Please tell me whether you had added all the points, origin points in New England that you are going to from which these rates will be applicable?

A. No, we have not.

Q. What is your plan in that regard, Mr. Hartmann?

A. My plan is to put in all points on the New Haven Railroad in the various 28300 groupings. This method of publication that we now utilize was one of expedience at the time.

[fol. 1105] Q. Refer to page 52 of Exhibit 1, please, Mr. Hartmann.

Now, Mr. Hartmann, you say here that your Exhibit 28 separates your traffic moving under the Section 2 rates under investigation into three groups, traffic which previously moved in rail box cars, traffic which partially moved previously in rail box cars, and traffic that you have acquired from other means of carriage as a result of publishing these rates.

Please tell me what conclusions you reach on the basis of the information in Exhibit 28.

A. The exhibit shows a reduction of about 20 per cent in revenue on traffic that previously moved via rail, but it assumes that the cars would be loaded to the same extent as they were loaded under Section 2 of Tariff ICC-F-4501. Therefore, the average revenue per car shown in the last column of \$700.11 in my opinion is overstated.

Q. Well, now, let's take that step by step, Mr. Hartmann.

In the column under the section headed "Section 2 of ICC-F-4501", in Exhibit 28, you have a sub-column called "Average revenue per car", and you have got a total figure, the first total, \$567.49. Is this the actual average revenue per car which you have received from traffic moving under the rates under investigation which have previously moved [fol. 1106] by rail?

A. It is.

Q. And then over at the end of the page in the last column you have an average revenue per car figure of \$700.11. That revenue per car you did not actually receive, did you?

A. No.

Q. That is revenue which you computed you would have received on the same traffic if the rates under investigation had not been in effect, is that right?

A. That is right. We reiterated the traffic and came up with the revenue shown there, and came up with that average revenue of \$700.11 a car.

Q. So that the superficial or initial conclusion you would reach from these two figures is that you are getting about 20 per cent less revenue on this traffic under the rates under investigation than you would have gotten in the event these rates had not been in effect—that is the comparison between the \$700.11 and \$567.49, right?

A. Yes, on the assumption that they have both been loaded to the same weights.

Q. And then your comment was that this comparison is not accurate for what reason, now?

A. It is my personal opinion that the cars would not have been loaded this heavy if they had not moved under Section 2.

Q. So the average revenue would have been much less [fol. 1107] than the \$700 if they had not moved under the Section 2 rate?

A. Right.

Q. What is your second conclusion from this Exhibit 28?

A. In the third group, I would like to point out that the traffic that previously moved via other than rail, there were no shipments less than 40,000 pounds. This in my opinion

clearly reflects the effect of the rate situation on shipments of 20 and 30 thousand pounds shown in my Exhibit No. 22.

Q. That Exhibit 22 is where you list a lot of truck rates?

A. That is right.

Q. And your conclusion is that your Section 2 rates on the 20 and 30 thousand brackets are entirely competitive with truck rates?

A. No, they are too high to meet truck competition, in my opinion. I think the Exhibit 22 reflects that.

Q. And you draw that conclusion from Part 3 of your Exhibit 28, this traffic that previously moved other than railroad?

A. That is right.

Q. What is your third conclusion from Exhibit 28, Mr. Hartmann?

A. Column 4 of Exhibit 28, the column headed "Revenue", shows the total revenue of \$207,414.15.

Q. That has actually been received?

A. That is right, under this Section 2 of 4501. Assuming we would have received the revenue shown in column 8 for the first group of traffic, which would have been \$178,529.42—

[fol. 1108] Q. Now, you are assuming, Mr. Hartmann, are you not, that the Section 2 rates were not in effect, you take the situation back to what it would have been before you published these rates, right?

A. That is right.

Q. And then when you would have received—

A. On the theory again there would be no diversion we would have received exactly the same traffic, plus 50 per cent of the revenue shown in Group 2.

Q. That is 50 per cent of 57,500?

A. That is right, or \$28,511.

Q. Why do you figure—

A. No, \$28,256, approximately.

Q. Why do you figure that if your rates under investigation had not been in effect you would have received 50 per cent of this 57,500 in Part 2 of Exhibit 28?

A. Our survey indicates that 50 per cent is a conservative figure. Our survey indicates it would have been greater, and some of the shippers that are going to testify here will indicate to that effect.

Q. Well, is this Part 2—are these Part 2 figures mixed traffic, that is traffic from shippers who previously moved partly by rail and partly by highway?

A. That is correct, and they contain both types of shipments, shipments that did move via rail and shipments that [fol. 1109] did move via highway.

Q. And you figure at least 50 per cent of this stuff is traffic that you had before?

A. That is correct.

Q. Will you continue?

A. Adding these two figures together, plus the \$33,756.22 shown in the third group—I have given you some wrong figures.

To restate this figure again, naturally we receive \$144,709.86.

Q. Where do you get that?

A. That is Part 1. That is all we received on this traffic. We received 50 per cent of the Group 2 traffic. That would be \$28,256, even.

And we receive this new revenue of \$33,756.22, or a total of \$206,722.08.

Q. Which you would have had if the Section 2 rates had not been in effect?

A. No, again I am giving you the wrong figure, if I may. What we would have received actually is \$178,529.42, plus 50 per cent of the Group 2 traffic if we didn't have this box car in effect. That would be—

Mr. Carpenter: 28,500—

Mr. Keenan: Plus the 178,500.

Mr. Carpenter: \$28,755.70. Add that to the \$178,529.42, [fol. 1110] The Witness: That would be \$207,284.62 we would have received if we didn't have these in effect, and what we actually received was \$207,414.15.

By Mr. Keenan:

Q. Now, of course, Mr. Hartmann, you had to operate additional cars to get the \$207,414 under the Section 2 rates now in effect?

A. That is correct.

Q. Do you regret that?

A. No.

Q. Why?

A. I have said in my testimony, we moved empty—we would have moved empty westbound.

Q. Before we leave that, you said your estimate of 50 per cent of Part 2 was conservative. What do you mean by "conservative"—too high or too low?

A. Well, 50 per cent is in my opinion too high to consider as that portion moving previously by rail. We think it was less than 50 per cent.

[fol. 1112] Cross examination.

By Mr. Carpenter:

Q. Mr. Hartmann, in response to a question asked you by Mr. Keenan, you stated that it would be the purpose of the New Haven, if these rates were approved, to spread the rates to all of the origin points served by the New Haven, itself, and I take it you meant by that the same system of rates would be established for movement of all commodities in straight or mixed carloads from those points to Chicago, or East St. Louis, is that correct?

A. That is correct.

Q. That would be in a westbound direction, wouldn't it?

A. That is correct.

Q. Would you do the same thing eastbound?

A. We have that under consideration, and we haven't come to any conclusion as yet on it.

Q. Well, one of the considerations that you urged in your Exhibit No. 1 for these rates was the fact that you suffer from an imbalance of traffic, a heavier movement inbound than there is outbound.

If you establish these rates in the inbound direction, certainly the rates would have no beneficial effect to reduce your imbalance, would they?

[fol. 1114] By Mr. Carpenter:

Q. Can you answer the question?

A. I can answer it this way: There is no question the eastbound rates on the same level would be compensatory

and above fully distributed costs, but the westbound rates produce more net on the bottom line than the eastbound rates would do, and that is why we considered the westbound first. We haven't given any further consideration to the eastbound at the moment.

Q. The westbound rates apply only to the destinations Chicago and St. Louis. Why did you choose those two points?

A. At the time we came to the conclusion of publishing these rates, the Plan III rates had gone into effect to those same points, and since it was our first thought that what we had to do was preserve traffic to the New Haven via the box car route, being the most economical, we limited the rates to those two points to which Plan III applied, so as to obtain the traffic, if possible, in box cars which to us was the most economical.

However, since putting them in, we have come to the conclusion that it seems like a good basis to use regardless of Plan III.

Q. The initial consideration, at least your principal thought was to put these rates in to make them competitive with the Plan III service of the other railroads that had [fol. 1115] already been put into Chicago and East St. Louis, and that is why you chose those two destinations, isn't it?

A. That is true in part. The purpose would be, I think as I have explained in my testimony, and in previous cases, we did not have the facilities at this time to move this traffic under Plan III. and our best and most economical way to move it was in box cars.

Q. I think you indicated in your Exhibit 1 that the witness—there would be another witness who would talk about the question of available facilities?

A. That is correct.

Q. Now, the rates that are here under consideration, and Mr. Hartmann and I will sometimes refer to them as proposed rates, but the fact is they are already in effect?

A. That is correct.

Q. Apply on all commodities with the exception of a few, and they apply in either straight or mixed carloads; that is correct, is it not?

A. That is correct.

Q. Now, the service that is given these rates—and by “service” I mean the physical service—would be to all intents and purposes the same as you give to your other box car traffic, and I exclude from that the all-commodity traffic?

A. No, not quite the same, Mr. Carpenter.

[fol. 1116] Q. Well, now, the physical service—by that I mean, and let’s be certain on this, the business of switching the cars at origin and, of course, there is a switch at destination, too. That is the same, is it not, as would exist with respect to the traffic that moves on your specific commodity rate?

A. That is correct.

Q. And the handling of the cars through the yards, and all the rest of the operation would be the same, would it not?

A. That is correct.

Q. Now, what do you mean it would not be quite the same?

A. We do not permit stop-off and these other privileges in connection with this particular rate, so to that extent you have costs in connection with those that are not attributable to—

Q. Now—

Mr. Keenan: Just a minute, not attributable to what?

The Witness: To these rates.

[fol. 1125] Q. All right, sir.

Now, also on page 14 of your Exhibit 1, you refer to the promiscuous loading rule, marriage, and other like rules and practices, you say, which permit a consignment to be carried on more than one freight car.

A. Yes.

Q. What do you mean by “marriage” rules?

A. Well, a marriage rule is the supplying of a car by the railroad for its convenience at a point intermediate to the origin point so as to eliminate the services the railroad would be required to give at that intermediate point if the car—if the car from origin was physically stopped.

Q. That would mean, then, would it, Mr. Hartmann, that if a shipper from Boston, for instance, to Chicago, were to have a shipment at Springfield, Massachusetts, which [fol. 1126] he would like to have loaded into that same car—is that intermediate on the New Haven?

A. It doesn't happen to be, but we permit that intermediate to be competitive with the B&A, so the illustration is all right.

Q. He could request the New Haven to stop the car that originated in Boston at Springfield for completion of loading, is that right?

A. That is correct.

Q. And instead of doing that, the New Haven would spot an empty car at Springfield, combine the loadings in the two cars, one at Boston and one at Springfield, and treat them as though they had actually been loaded in one car?

A. That is correct.

Q. Now, that service of the railroad is utilized rather extensively by the freight forwarders, isn't it?

A. That is correct.

Q. And you make a charge, do you not, for the stop-off, whether you actually stop the car off or not?

A. That is right.

Q. Now, that is one of the reasons that the actual loadings of freight forwarder traffic in the box cars is so light, that is one of them?

A. Yes, I would agree to that.

Q. Now, this promiscuous loading rule, what is that? [fol. 1127] A. That is where the railroad performs the loading in a car. We can accept a shipment of 60,000 pounds and load it in as many cars as we desire and ship it to destination.

Q. What about a shipment of 30,000 pounds on the old commodity rate?

A. We may load that in more than one car. It depends on the circumstances of the loading conditions at the origin at that time. It is more economical for us to load more than one car, we load more than one car, as long as the cars are going back in that direction empty, anyway.

Mr. Keenan: Counsel was referring to the all commodity rate—

Mr. Carpenter: The \$2.04 rate shown on page 14 of Exhibit No. 1. That is the Section 1 rate, I take it?

The Witness: Section 1.

By Mr. Carpenter:

Q. You have told us that that promiscuous loading is at the railroad's election. Actually what you do is this, is it not, Mr. Hartmann: You spot your cars at the freight house, or location where your forwarders are operating, and you load the cars as the forwarder directs, is that not true?

A. No.

Q. Well, what is it?

A. The forwarder delivers the freight to us, and we load the cars as we see fit.

[fol. 1133] Q. On page 15, in response to Question 17, you mention the fact that your inbound traffic consists of raw or semi-finished products, outbound is finished products, heavier inbound than outbound, and you say that is particularly true in New England.

A. That is correct.

Q. Now, that would be true with respect to these other railroads as well as the New Haven, then, insofar as New England is concerned?

A. I would assume so.

Q. And how far south does that situation exist? You serve New York City. Is the same thing true there?

A. I can't say.

Q. You can't say?

A. No.

Q. You can't say because you don't know?

A. No, let me put it this way, Mr. Carpenter. If you are going to bring us down as far as New York City, we are very little, we do not compete to any great extent in the New York City traffic as against the trunk line railroads.

Q. You mean the east-west traffic?

A. That is right.

[fol. 1134] Q. And the reason for that is that your junction point at the west is what, Maybrook?

A. That is up at the north, but down in New York we do have the junction point at the harbor, but there is no reason for a shipper to give the New Haven Railroad the traffic when the Penn, the CNY, DLW, Erie and NYC can deliver it direct. Our only traffic New York City primarily is what is destined to Harlem River or that area in the Bronx.

Q. Mr. Hartmann, this economic imbalance of traffic moving heavier into New England than it moves outbound has existed for a great number of years, hasn't it?

A. Oh, yes.

Q. It is just one of the economic characteristics of the New England region?

A. Yes, I think I could say that.

Q. You encounter competition for the inbound traffic as well as for the outbound?

A. Yes, but not to the same degree.

Q. Well, all carriers hauling to and from New England are faced with this economic situation of imbalance, and naturally the competition for the westbound traffic would be pretty fierce, wouldn't it?

A. Let me put it this way, and that has been our big concern. A motor-carrier dealing in specific points will put in rates one way and reduce rates in the other direction [fol. 1135] to keep his traffic in balance, and that is the situation we have been faced with continually, and we continue to lose the business.

Q. Well, Mr. Hartmann, what I was trying to get to is that you told me you have had historically an imbalance of traffic due to the heavier movement inbound to New England than there is westbound out of New England.

A. That is correct.

Q. Now, in that situation where there are carriers by railroad, carriers by motor vehicle, and carriers by freight forwarding, I guess you would call them—the forwarder wouldn't count, but carriers by railroad and carriers by motor vehicle, all of those carriers would be competing fiercely with each other for the limited amount of traffic to balance their movements westbound, wouldn't they?

A. Yes, but as I said again the motor carriers continually cut the rate to keep themselves in balance.

Q. Now, the fact is that you have fierce competition from all sources, including the railroads for that traffic, don't you, westbound?

A. Only in Plan 3.

Q. It is fiercest in Plan 3?

A. Yes, sir.

Q. Now, does the New Haven Railroad have a Plan 2 service?

A. Yes, sir.

Q. And in that Plan 2 service, don't you meet the established rates of the motor carriers?

A. To specific points only.

Q. You mean the points served by the railroad?

A. That is right, and it doesn't cover the area that the motor carriers cover to offset the imbalance.

Q. But you meet them right on the head, don't you?

A. To those specific points, yes.

Q. And right on the head regardless of the direction?

A. That is correct, but again only to the specific points, not to the area involved.

Q. You meet them to the points served by the railroad in the westbound direction, don't you?

A. Yes, which is a small part of the total area in that particular Chicago or St. Louis area as an example.

Q. Now, that is the same area from which you draw your inbound traffic, isn't it?

A. No, not necessarily. Your inbound traffic doesn't necessarily come from Chicago or St. Louis.

Q. Where would it come from?

A. Oh, it may come from the grain places, for example. I think that is a good illustration. You get the grain inbound cars. You may get from Utah your copper bars, and so forth.

Q. You ship to those places westbound, don't you?

A. To a very limited degree. Their consumption is small compared with the eastbound movement.

[fol. 1137] Q. Are you telling me now, Mr. Hartmann, that because you have a heavy movement of grain that you are burdened by it?

A. I didn't make that statement.

Q. You didn't?

A. No, sir.

Exam. Kane: I understood the witness to state, Mr. Carpenter, that the area of inbound movements was not confined to Chicago and Illinois, and that he brought in the question of grain as indicating other areas where traffic moves eastbound.

I think the purpose of his answer was in response to a question you raised—and correct me if I am wrong—that most of the traffic eastbound was from Chicago and St. Louis.

Mr. Carpenter: I didn't mean to indicate that.

By Mr. Carpenter:

Q. My point is, though, Mr. Hartmann, that from whatever point the inbound traffic originates, you also have the potential and the ability to ship westbound to that point, isn't that true?

A. Yes, the ability, but maybe not the potential.

Q. Well, now, what do you mean not the potential? You mean maybe there isn't any traffic moving westbound?

A. That is correct, to that point.

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[fol. 1138] Q. At page 18 of your exhibit here today you refer to the loss by the New Haven of the equivalent of 350 to 400 cars of traffic from Boston to St. Louis, and I take it you mean that that was lost to the Plan 3 service of some other railroad?

A. That is correct.

Q. Is that the same instance you talked about in the 6992 [fol. 1139] case?

A. It is.

Q. That consisted of boot and shoe factory supplies, did it not—that traffic?

A. Yes.

Q. And then when you put in the Plan 3 rates yourself—by the way, the New Haven has established Plan 3 rates?

A. That is right.

Q. The equivalent of the rates of your competing railroads?

A. That is correct, sir.

Q. Did you not get some of that traffic back?

A. Unfortunately, no.

Q. You testified, as I recall, in 32533—are you familiar with that case?

A. Yes.

Q. —that you expected to get that traffic back. Am I in error on that?

A. No, you are correct.

Q. And you still haven't done it?

A. That is correct.

Q. The railroad that took that traffic from you was the New York Central?

A. That is correct, sir.

Q. And they still have it?

A. That is correct.

[fol. 1140] Q. You can't get back even though you offer the shipper the same service that the New York Central has?

A. I didn't say that.

Q. Well, you have been unable to get it back?

A. By what we had to offer up to the present time, yes.

Q. Well, you offered them a Plan III service, haven't you?

A. Let me put it this way: No, up until October 16, and I don't know what has happened since then.

Q. Well, now, I noted at various places in this Exhibit 1 of yours, and I guess we will get to it a little later, that you stated that the New York Central in offering its Plan III service will lease one of its Flexivans to a shipper?

A. That is correct.

Q. And you said the New York Central made a charge on that of \$16 for a trip from Boston to Chicago?

A. That is my understanding.

Q. Is that why you couldn't get that traffic back?

A. Not entirely, no.

Q. Part of it?

A. That was one element. The other element, Mr. Carpenter, was clearances.

Q. Clearances? You mean the business of being able to provide Plan III service yourself by reason of clearances on your line?

A. That is right, from Boston.

Q. And that is something I should discuss with Mr. Orner?

[fol. 1141] A. Yes.

Q. Also at page 18 of your Exhibit 1 you refer to a loss movement of half a million pounds a week from Connecticut to the Midwest, saying that that had gone to the Plan III service.

Was it also New York Central that took that traffic?

A. No.

Q. Who was that?

A. I believe that was the Pennsylvania Railroad.

Q. And since these Section 2 rates have gone into effect, you say you have gotten some of that traffic back?

A. No, we got that traffic back in Plan III from New Haven.

Q. That is moving by Plan III? Look at page 18 of Exhibit 1—I am afraid you are in error—the last sentence of your answer appearing on page 18, just prior to the next question.

A. Well, let me put it this way, Mr. Carpenter: There were two elements involved there, two different shipments. One has given it back to us in Plan III, and the other is in box cars.

Plan III clearances from New Haven cleared up, as I recall, around July, just about the same time that these rates went in we were able to handle the hire trailers out of New Haven.

[fol. 1146] By Mr. Carpenter:

Q. Your Exhibit 9, if you please, shows only the indices of revenues. You show as a source the publication of the Interstate Commerce Commission.

Did that publication show the actual revenues as well as the indices?

A. Yes.

Q. Can you give me the railroad revenues for the year 1947?

A. \$8,972,800,000.

Q. And for the year 1949?

A. \$8,884,700,000.

Q. And now for the year 1957?

A. \$10,919,900,000.

Q. Now for the motor carriers, the same years, if you please.

A. 1947—this is motor carriers of property, only—

Mr. Keenan: 1948 you asked for?

Mr. Carpenter: 1947.

The Witness: \$2,213,600,000.

By Mr. Carpenter: —

Q. 1949?

[fol. 1147] A. \$2,911,200,000.

1957, \$6,159,900,000.

Q. Your Exhibit 10 lists the distribution of intercity freight traffic in the United States. Can you tell me whether or not the figures shown under motor trucks in the column headed "2" includes all the traffic of private as well as carriers for hire?

A. It does, by the asterisk shown at the top and explained down below.

Q. Yes, it does. Well, these figures could not then be related to the revenue figures that you just read from the source of the Exhibit 9, could they?

A. Not the ton-miles as such, no. One is revenue, the other is ton-miles, Mr. Carpenter.

Q. Well, do those revenue figures include private transportation?

A. No, they do not. The only thing I was trying to point out, you can't very well relate revenue to ton miles as a general rule.

Q. And your Exhibit 11, then, merely states in terms of percentages the figures in Exhibit 10?

A. That is correct.

Exam. Kane: Well, do I understand, then, that on Exhibit 11, column 2, motor trucks, that those figures include private carriage?

[fol. 1148] The Witness: Definitely, sir. Our competition is with the private carriage as well as with carriers for hire.

Q. Have you personally made any investigation of the nature of private transportation by motor vehicle? You say that is one of the forms of transportation with which you compete?

A. In and of itself, no, but in our regular run of business, [fol. 1149] we run into these private carrier operations. For example, one of the latest ones we attempted to meet was the private carriage of Chase and Company. This happens quite often where a shipper has two plants, and will set up an operation between those two plants if he happens to have pretty close to a balanced load.

We met that situation by a rate adjustment, and are not quite sure yet whether or not they are going to enter private carriage competition. I don't think they are. The last I heard from them, they thought the rate adjustment would take care of it, and they would eliminate the further installments on the truck—I think they paid the first installment.

Another one we ran into, which has been going on now for a number of years, and it is almost incredible, is the movement of motors from Milford, Connecticut, to Los Angeles. We have lost that one hundred per cent to private carriage.

Q. What are they bringing back?

A. Motors. It is a perfect balanced movement, and what the rails and motor carriers get is what is imbalance. In other words, if they have an off-balance, you get what is left.

Q. That is the usual characteristic of this private transportation, isn't it—

A. No.

Q. Let me finish my question, please. —that, of course, he is not a shipper, but the person who transports his own [fol. 1150] traffic will transport it to the extent that he can substantially balance the movement so that he has got a load in each direction, and call upon the common carrier for the surplus.

A. That is not entirely true, Mr. Carpenter. We moved some atomic material, some of which is sold outside of the Atomic Energy Commission, and from the Putnam area, to one of the atomic plants, although it is a one-way movement, we lose all of that traffic to private carriage.

The main thing that comes into the question of private carriage is your rate, will your rate take care of, is it sufficiently high enough to pay the shipper to operate its own trucks and come out with a lesser transportation cost than you would charge?

Mr. Keenan: For clarification, did the witness mean to refer to Putnam, Connecticut?

The Witness: Yes.

By Mr. Carpenter:

Q. I mean from the actual practicality of the situation, Mr. Hartmann, my question was, isn't usually the situation of private transportation that you have two types, one where the operation is one for the convenience of the shipper, himself—for instance, in a delivery to retail stores or something like that, where he can load the whole vehicle and then stop it off enroute to kick it off, relatively a short-haul operation, or one where there is substantially a balanced operation? That is usual?

[fol. 1151] A. Usual, but not absolutely the facts. Other elements enter into it, too.

[fol. 1160] Exam. Kane: Well, let's be sure I understand what you just stated with respect to Exhibit No. 13, the column "Manufactures and Miscellaneous". Did you just state beginning with the year 1942 through and including 1957 that there should be a digit 1 preceding each of these figures?

The Witness: That is right.

[fol. 1162] Q. Mr. Hartmann, when you speak of fully distributed costs, now, you are speaking of fully distributed costs of performing rail carload service, are you not?

A. That is correct.

Q. So that if you get fully distributed costs from all traffic, overall, you have recovered the cost of providing that service plus a proportionate profit?

A. That is right.

Q. Now, over and above that you have incurred a passenger deficit that you are going to have to get back from some place or go broke, isn't that true?

A. No.

Q. Why not?

A. Because we hope to give up the passenger business and not try to burden the freight any longer.

Q. As long as you have that passenger deficit, you are going to have to recover it somewhere. You couldn't afford to absorb it, could you, Mr. Hartmann?

A. Well, I will give you this answer again. You can't afford to absorb it, but by the same token, you can't afford to increase your rates to such an extent that you divert traffic that is profitable away from it.

Q. And yet the actual fact is, as shown by your own exhibits, that over the span of years your increase in revenue from manufactures and miscellaneous traffic has outstripped your increase in revenues from all other traffic? [fol. 1164] A. That is what I specifically tried to point out here, that we went too far on those particular commodities.

Q. Well, now, let's take a look at the New Haven.

A. Pardon?

Q. Let's take a look at the New Haven, sheet 2 of your Exhibit No. 13. If I read that correctly, from 1939 to 1957, the total freight revenues of the New Haven increased by only 89.9 per cent.

A. That is correct, sir.

Q. And yet your revenues from manufactures and miscellaneous increased by almost twice that ratio?

A. That is correct.

Q. And that is the traffic you want to cut the rates on, the manufactures and miscellaneous?

A. This group of traffic is what we need to cut the rates on to maintain our share of the business. I am not intending to cut them back to 100, I am cutting them back only to a competitive level.

Q. That is just so you can put traffic in the cars that are going back empty and hauling it free, is that the same—

A. Oh, no.

Q. No?

A. No, sir.

[fol. 1165] Q. At the middle of page 29 of your Exhibit 1, where you reply to question number 25, you state that in the situation where the New Haven is more dependent on L.&L. and M&M traffic, its revenues would be more adversely affected by the ex parte rail rate increases, and you say the facts are in accord with this.

Well, it seems to me that if your M&M traffic had been lost, it would have declined in importance rather than to have increased in importance.

A. No, not entirely so.

Q. First, if I may interrupt, first it did increase in importance to your line, didn't it? The M&M traffic over those years?

[fol. 1166] A. That is right.

Q. What do you mean, then, when you say the facts are in accord with this?

A. Taking a look at Exhibit 17, you will see that the miscellaneous and manufactures for the Eastern District went up from 100 in 1939 to 284.7 in 1957, while the New Haven Railroad index went up from 119 in 1939 to 262.9, or 21.8 percentage points lower than the Eastern District.

Q. Well, look at Exhibit 16. If you were leasing the M&M traffic as you allege by reason of these rate umbrellas, it would decline in importance revenue-wise to your line, and the fact is it increased?

A. No, the revenue increases, the tonnage declined. Now, looking at 16, Mr. Carpenter, if you will look at the Eastern District, it went from 38.9 to 53, practically a ten per cent increase, while the New Haven Railroad went from 64.1 to 67.9, about a 50 percent increase or slightly less.

Q. From 1949 to 1953, four percentage points, from 64 to 68 is four percentage points. I gave myself a tenth of a point in a couple of places, but percentagewise of the figure you are working on, it is an entirely different calculation.

Q. The fact is your M&M traffic increased in revenue importance to you over that span of years?

A. That is right, I admit that.

Q. One time in 1953 it was 70.5 per cent. That doesn't [fol. 1167] sound like you were losing the traffic.

A. Yes, we are losing the traffic, Mr. Carpenter. You are looking at revenue.

Q. Are you talking about net loss?

A. I am talking about tonnage loss.

Q. That is what I am talking about. You maintain you handled less M&M traffic in 1957 than you did in 1939?

A. Definitely.

Q. In terms of tons?

A. Very definitely.

Q. Have you got an exhibit that shows it?

A. I think that duplicate exhibit shows it.

Q. What duplicate exhibit—oh, 26?

Mr. Keenan: It is Exhibit 8.

The Witness: I didn't have 39 in there, Mr. Carpenter.

By Mr. Carpenter:

Q. Now, that doesn't show it, Mr. Carpenter?

A. No, the year 1939 doesn't show.

Q. It doesn't even show your total M&M traffic, now, does it? Look at the heading on the exhibit.

A. Yes, it is manufactured and miscellaneous traffic, Account 940.

Q. That is what originated. That is what originated on your line which you turned over to connecting carriers. That is not your total traffic?

[fol. 1168] A. No.

Q. You don't have an exhibit showing that, do you?

A. No.

Q. As a matter of fact, take another look at that Exhibit 8; or Exhibit 26—I don't care which it is—that shows that there was a reduction in freight revenue on that traffic that was forwarded, but your other exhibits—the ones we were just talking about—show there has been a substantial increase in revenue from that traffic.

Sheet 2 of Exhibit 13 shows your revenue from 1947 in manufactures and miscellaneous, to 1957 an increase of some almost 16 million dollars.

A. That is correct.

Q. While your Exhibit 26 shows a loss of about two million dollars on the traffic that was forwarded to connecting?

A. That is correct.

Mr. Keenan: For clarification, is counsel speaking of the two million dollars obtained between the year 1947 and 1957 on Exhibit 8?

Mr. Carpenter: Yes.

Mr. Keenan: I don't think you are right.

Mr. Carpenter: Oh, I beg your pardon, I am wrong.

By Mr. Carpenter:

Q. Exhibit 8 shows 58, we talked about that before.

A. Well, you went to 58, Mr. Carpenter.

[fol. 1169] Q. Did I?

A. I thought you did.

Q. Well, as far as 1957 is concerned, the exhibit shows there is a loss of about five—

A. 500,000.

Q. Well, not quite that, four and a half.

Exam. Kane: Where is the year 1958 reflected on Exhibit 13?

Mr. Keenan: It is not, Mr. Examiner, that was the point.

Mr. Carpenter: It is on Exhibit 8.

Mr. Keenan: That was the reason for the confusion.

Mr. Carpenter: Yes, it was my error, Mr. Examiner.

By Mr. Carpenter:

Q. Now, Mr. Hartmann, your Exhibits 14, 15, 16, 17, 18 and 19 depend in part at least upon your Exhibit 12, but I observe that they use nothing but the percentage figures, and you will check out to see which is correct on Exhibit 13, whether it is the absolute figures or the percentage figures?

A. That is correct, I will do that.

Mr. Keenan: Mr. Examiner, may I say for the record, lest I forget to do something about that tomorrow, during this interrogation somebody has checked these figures with a slide rule, and mathematically it looks as though the one has been left off on Exhibit 13. If we find out otherwise, we will certainly advise you, but as of now it is a typing error Mr. Hartmann referred to.

[fol. 1170] Mr. Carpenter: Counsel will confirm the record if Mr. Hartmann's judgment is correct after you correct it, that the one should be put on, and then let's physically correct the exhibit.

Mr. Keenan: Fine. What I am sure is if I find out he is wrong I will tell you.

Mr. Carpenter: I want you to tell me either way.

By Mr. Carpenter:

Q. On page 31 of your Exhibit No. 1, the first complete paragraph there, you make the statement that the average hauls of the other railroads in the Eastern District are longer than—no, I am sorry. You make the point that the New Haven hauls are shorter than the national average. Can you tell me, please, sir, what the average haul of the New Haven, or how the average haul of the New Haven would compare with the average in the Eastern District—would it be longer or shorter?

A. Shorter.

Q. Well, if it is shorter than the average for the Eastern District, under your theory of the rate umbrella for the long hauls, why is it that the New Haven has, as you allege, lost more of its manufactures and miscellaneous than has the average for the Eastern District?

A. Because we lost more local than most of the other railroads. In other words, our drop in local traffic was much greater due to the fact our local traffic is much shorter [fol. 1171] haul than, for example, the Pennsylvania Railroad. They may have lost the same amount of traffic locally within the same area we serve, so far as area or mileage is concerned, but in the overall they have been able to haul more local traffic than we could.

Q. Is that where you think your big loss has come, in the local traffic?

A. That is one of the losses.

Q. Well, is it the big one?

A. Well, I won't say it is tremendous, it is a big one. Any loss is big to me.

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[fol. 1172] * By Mr. Carpenter:

Q. Mr. Hartmann, at pages 35 and 36 of your Exhibit 1, in response to Question 27, you speak of the forwarder revenues of the New Haven.

Now, first of all the New Haven encounters competition from other railroads for forwarder traffic, does it not?

A. That is right, sir.

Q. That is pretty stiff competition, too, isn't it?

[fol. 1173] A. Any competition is stiff.

Q. You have already told us that by reason of the loading arrangements and the marriage rules and these other rules that forwarder traffic is transported in relatively lightly loaded cars, correct?

A. Well, I think I testified that the forwarder traffic is transported in cars about ten-ton average.

Q. That is relatively lightly loaded, isn't it?

A. It depends what you compare it with.

Q. Well, if you compare it with manufactures and miscellaneous traffic.

A. That is relatively lightly loaded, yes.

Q. And that is what forwarder traffic is, if it were moving—it is generally the same type of traffic, isn't it, manufactures and miscellaneous?

A. I don't think you could put it in the same class.

Q. You can't?

A. I don't think so.

Q. I appreciate it is moving in small shipments by the forwarder.

A. But it is such a varied type of package it makes it a little more difficult to load a car than if you had a standard package of one particular type. That is why I say I think it is a little different in that respect.

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[fol. 1182] By Mr. Carpenter:

Q. On page 38 you refer to the three types of trailer-on-flatcar service, the three plans. I think we have talked about Plan I.

Plan II I think you and I talked about, there is where you provide the door-to-door service in the railroad trailer.

A. We provide all of the equipment and all of the service [fol. 1183] vice, similar to that performed by the motor carrier.

Q. And at rates substantially the same as motor carrier rates, is that correct?

A. That is correct.

Q. So far as you know, they are—

A. I think the rates are the same in most cases. I think there is an isolated case where they are not.

Exam. Kane: You are talking about the Plan II rates?

Mr. Carpenter: Yes.

By Mr. Carpenter:

Q. The Plan III—

A. Before you ask that next question, Mr. Carpenter, there are many motor carrier rates that may be lower than ours. I didn't mean to leave the impression that they are substantially the same as many motor carriers. They may not be the same as all of them.

Q. They are the same except in isolated instances as the so-called standard rates, such as the Eastern Central rates, or the Bureau rates?

A. That is correct.

Q. Now, Plan III trailer-on-flatcar service is the flat charge for a maximum of traffic in the trailers with the shipper supplying the trailer, the railroad supplying the flat car and loading the trailers to and from the flat car?

A. Two trailers.

Q. Two trailers?

[fol. 1184] A. Yes.

Exam. Kane: May I ask a question there, Mr. Carpenter. in the light of the answer?

Mr. Carpenter: Yes.

Exam. Kane: Am I to understand that under the Plan III service that it contemplates two trailers in every instance?

The Witness: In every instance, two trailers must be offered at the same time, or if only one is offered, they pay for two just the same.

By Mr. Carpenter:

Q Mr. Hartmann, the Plan III rate from Boston to Chicago is \$494.50, is that correct?

A. That is correct.

Q. And that covers the transportation of not to exceed 70,000 pounds of freight, in not to exceed two trailers supplied by the shipper, said trailers to be delivered to the railroad for transportation at the railroad loading ramp in Boston, and to be turned over then to the receiver at the railroad loading ramp in Chicago?

A. That is correct.

Q. The lading shall consist of at least two commodities, neither of which shall aggregate more than sixty per cent of the total weight of the lading.

Exam. Kane: Was it limited only to two commodities?

Mr. Carpenter: Two or more.

Exam. Kane: I thought you said two.

[fol. 1185] Mr. Carpenter: At least two commodities.

Exam. Kane: And the shipper furnishes the trailers under Plan III.

Mr. Carpenter: Yes.

Exam. Kane: And what is the situation under Plan II with respect to trailers?

Mr. Carpenter: The railroad under Plan II provides the trailers themselves and all services, the same as a motor carrier would provide, and at rates which are the substantial equivalent of the motor carrier rates.

The Witness: That is correct, except that Plan II and Plan III, I just want to make clear, are limited to certain points, and are not widespread.

Exam. Kane: Well, the destination—is store door delivery performed, the trailers are taken off the flat cars and delivery made, store door?

The Witness: On Plan II, but not on Plan III. Plan II is a door-to-door service. Plan III is a ramp yard to ramp yard service.

Exam. Kane: Thank you.

Mr. Keenan: Would you like to invite the Examiner's attention to page 39 of Exhibit 1, where the schedule of Plan III charges per consignment are set out? Those are expressed in terms of charges per consignment and not charges per hundredweight.

[fol. 1186] The Witness: That is correct, up to a maximum of 70,000 pounds.

Mr. Keenan: The Plan II rate is a charge per hundredweight?

The Witness: That is right.

By Mr. Carpenter:

Q. Now, Mr. Hartmann, turning to page 40 of your Exhibit 1, you point out that the charges—I should have said page 39 which Mr. Keenan was talking to you about.

The charges there set out are the tariff charges, are they not?

A. That is correct, up to the maximum of 70,000 pounds. There is an additional charge for any excess over 70,000.

Q. Now, as you point out following that, those do not represent the total costs to the user of Plan III, because he must supply his trailer and his own cartage or pickup and delivery service within the terminal areas?

A. That is correct, sir, or beyond the terminal area—to and from the ramp.

Q. And then at page 40, you refer to the fact that the New York Central through its subsidiary will rent trailers to shippers for \$18 on a one-way trip from Boston to Chicago?

A. That is correct, sir.

Q. Were you present in the hearing room in 32533 when the New York Central witness testified about the rental charge on those trailers?

[fol. 1187] A. I don't believe I was, Mr. Carpenter.

Q. What is the source of your information there on page 40 that the rental charge is \$18 a trip?

A. The only source of my information was from our soliciting forces attempting to get the business for our railroad.

Q. Was that charge made to a freight forwarder or to some other shipper?

A. Anybody. That was a quotation being made by the New York Central subsidiary.

Q. In Boston?

A. Boston or any other point—Waterbury, Hartford.

Q. \$18 rental charge?

A. That is right.

Q. That is not a public tariff charge, is it?

A. Not as far as I know. I don't know how the charge is arrived at, how it is published or otherwise. All I know is that is what they are charging.

Exam. Kane: Do you know whether or not this is a standard charge, or is it subject to variation?

The Witness: I think it is standard. I have never run into anything different but \$18. Some of the other railroads have something different, but with the NYC, the only thing I ever heard of was the \$18.

Exam. Kane: What happens to the trailer, so far as charge is concerned, on return movement?

[fol. 1188] The Witness: Well, this is my understanding. Being as it is the NYC subsidiary, they take possession at the other end, because it is a company that operates in St. Louis as well as Springfield and Boston and Chicago.

By Mr. Carpenter:

Q. What company is that?

A. The New York Central Transport, I believe.

Q. Now, you refer then—strike that.

You are satisfied that that is the charge being made to the shippers in Boston and the other points served by the New Haven and then competitively by the New York Central?

A. On Flexivan.

Q. Who owns the trailers that your company uses in its Plan II operation?

A. We do, or the connecting lines.

Q. The railroad?

A. We either own them or lease them, yes.

Q. Do you lease them from New England Transportation Company?

A. No, sir.

Q. Do you lease any of your trailers to shippers for Plan III?

Mr. Keenan: I am not sure I understand the relevance of this line of inquiry, Mr. Examiner. I say that because the only rates I know of of New Haven Railroad that are under investigation in this case are box car rates. We have some Plan III rates published and the witness has said so, but they are under investigation in Docket 32533, a complaint [fol. 1189] case where Eastern Central Motor Carriers is complainant, and I don't see the reason to go back over that ground in that case.

Exam. Kane: The rates are in issue, not here, and as you say limited to box car service. However, Plans II and III have been raised, and my inquiry was directed, of course, solely to classification; but to the extent that they are involved they don't participate in these rates at all, and actually there is no relevance at all except to the extent that the witness has raised it in his testimony. They have no bearing on the case at all, as I understand the issues here.

Mr. Carpenter: They do to this extent, Mr. Examiner: The witness says that it is necessary that he have these rates to meet the Plan III service of the New York Central. He has a Plan III service of his own, and I have a right to determine, if I can, why he doesn't meet the Plan III of New York Central with his own Plan III service, until such time as I hope the Commission condemns that Plan III service.

Mr. Keenan: I have no objection to his asking that question.

Mr. Carpenter: That is what I am getting to.

Mr. Keenan: If you ask him, I am sure he will give you an answer to it.

Mr. Carpenter: I want to know does he do what New [fol. 1190] York Central does. Do you lease your trailers to the shippers?

Mr. Keenan: That is the question I object to, because it doesn't produce any information along the lines Mr. Carpenter wants to know.

Exam. Kane: Well, does the record show that one reason for the proposed rates which are now in effect is to meet the Plan III TOFY rates, if that is one of the reasons for the publication of the rates then it seems to the Examiner that to the extent those rates are to compete with Plan III, certainly the witness is qualified to answer any question with respect to the rates under the Plan III service.

Mr. Keenan: Mr. Examiner, just one point I should like to suggest, and that is that the box car rates, New Haven Railroad's box car rates are not published to compete with the New Haven Railroad's Plan III rates, and Mr. Carpenter is not inquiring concerning the New Haven Plan III, not even the Plan III service.

Exam. Kane: My question was directed to a rather anomalous situation. If New Haven is competing with its own Plan III rates—but now you tell me that is not so.

Exam. Kane: If you feel, Mr. Carpenter, the question is relevant to something else you have in mind, I will permit you to pursue the inquiry.

Mr. Carpenter: I do, Mr. Examiner, quite definitely.

By Mr. Carpenter:

Q. Do you lease your trailers to shippers?

[fol. 1191] A. I think so, Mr. Carpenter. I don't know exactly.

Q. You don't know?

A. No, sir. I can answer you this way, that if we don't we had better wake up and do it, and I think we are making some arrangement to find ways of leasing them. I don't know just what the arrangement is.

Q. That would be to compete with the Plan III service of your competing railroads which already lease their trailers to shippers?

A. Well—

Mr. Keenan: I object to that, that is not in accord with what the witness has said.

Exam. Kane: It calls for a conclusion, unless the witness knows the reason for it.

Mr. Carpenter: He just got through saying if he didn't, if they weren't doing it now they should wake up and do it, and the reason—he must have a reason for saying that. To me it is perfectly obvious that it is to compete with the Plan III service of the other railroads which lease.

The Witness: I wouldn't put it that way.

Exam. Kane: The witness has answered a question with respect to the leasing or purchase of trailers in its own service. Now, if you know the reason for the purchase of the trailers, certainly you are at liberty to so state.

The question posed to you was do you know, or what is [fol. 1192] the reason, if you know, for the purchase of those trailers?

Mr. Carpenter: If the Examiner please, that was not my question.

Exam. Kane: Well, what was your question?

Mr. Carpenter: It is my understanding that the New Haven, he thinks, leases trailers which it now has to itself, the New Haven's shippers for use by those shippers in utilizing the New Haven Plan III service in substantially the same fashion as he has testified here with respect to the service of the New York Central, the Plan III service of the New York Central.

The Witness: I haven't stated that.

Mr. Keenan: I don't think we need have any trouble about this.

Mr. Carpenter: I will drop it. That is all right.

Exam. Kane: Let's clarify it completely.

Then I understood you to ask the question if the New Haven Railroad contemplated purchasing—

Mr. Carpenter: No, I didn't say anything about purchasing.

Exam. Kane: Very well, then, I was in error in that.

Mr. Keenan: Just this further point, Mr. Examiner. Mr. Hartmann said that a New York Central subsidiary, not the New York Central Railroad, leased trailers to shippers. There was that distinction.

Mr. Carpenter: That I understood.

By Mr. Carpenter:

Q. One other thing with respect to the Plan III service [fol. 1193] of the New Haven.

The service of the New York Central and the Pennsylvania, and some of the other roads, Plan III service, required, did it not, the loading of the two trailers on a single box car, or a single flat car, and the New Haven is now rendering its Plan II service by substituting two flat cars for one—

Mr. Keenan: For clarification, counsel means Plan III service?

Mr. Carpenter: Plan III, yes.

The Witness: Not entirely. We are in some cases loading a single box to a car, but in most cases, there are two to a car.

By Mr. Carpenter:

Q. Well, you have referred to your proceeding I&S 7022, at page 41 of your Exhibit 1, and that is the case where you propose your tariff rule which would permit you to use two flat cars for two trailers.

A. There is no question about that, Mr. Carpenter, but if you will notice, my exhibit here pretty well indicates there is more than—

Q. Which one?

A. Exhibit No. 29. Out of a total of 57 cars, there were 86 trailers, so that is quite a lot more than one to a car on the average.

Q. Well, let's look at page 1 of Exhibit 29. That shows New Haven to Chicago, and that says 41 cars with 54 trailers.

[fol. 1194] A. That is correct.

Q. That is not much more than one to a trailer?

A. It is recapped on the next sheet, 41 and 16 is 57, and 32 and 54 is 86.

Q. On the next sheet, sheet 2, I don't see any recap. Sheet 2 says number of cars, 16, number of trailers, 32, and that is Boston to Chicago.

A. That is two to a car in each case.

Q. So you use your long cars exclusively there?

A. Well, let me put it this way—

Q. Let me say it differently. I didn't mean that the way it sounds. Your Plan III service from Boston to Chicago during the month of August, 1959, was exclusively by the long cars with two trailers on each one of them.

A. I think I could give it to you a little closer.

During the period of August, 1959, we did not have clearances east of New Haven except on so-called Clejan equipment which could take two trailers to a car, and therefore when you see the Chicago business that happens to move via a particular line that can handle Clejan equipment. However, since that time, since I think it is September—the operating man will tell you the date—we have clearance now to Boston, so we will be loading two to a car.

Q. Would those be Clejan cars?

A. No, those will probably be TTX's.

[fol. 1195] Mr. Keenan: Would five or ten minutes be in order now?

Exam. Kane: Yes.

Mr. Carpenter: I would like to ask a question, if I may, before we recess.

Exam. Kane: Very well.

By Mr. Carpenter:

Q. What is a TTX car, is that a trailer train?

A. Yes. That I suppose gets its symbols from trailer train cars.

Q. And you lease those from the trailer train company?

A. That is right, I don't know—

Q. So much a mile?

A. So much a mile and so much a day, yes.

Q. And are you telling me now that as far as the New Haven is concerned, all of these disabilities that you and I discussed in prior cases have been removed and you have your clearance problems, you can rent these long cars and run your Plan III service?

A. I wish they were, Mr. Carpenter.

Mr. Keenan: Again this is a situation where I have a witness, Mr. Orner, who is fully informed on this matter.

I don't object to asking Mr. Hartmann, but I would rather have you wait.

Mr. Carpenter: I would like to pursue it a little more.

By Mr. Carpenter:

Q. You said some time in the latter part of August this [fol. 1196] clearance problem was alleviated.

A. September.

Q. Some time in September.

A. Part of it.

Q. Part was alleviated?

A. I said east of New Haven was taken care of.

Q. You never did have any trouble west of New Haven, did you?

A. Yes, we still have trouble west of New Haven. We have no trouble west of New Haven via the Maybrook route, but we still do not have clearances west of New Haven via the Harlem River.

Q. And these cars that you show on Exhibit 29, sheet 2, from Boston—were they all Clejans, did you tell me?

A. On sheet 2, yes. They would have to be.

Q. And they wouldn't have to be now if you went by way of the Maybrook route?

A. No.

Q. Is that right?

A. That is correct.

Q. They would be ordinary TTX?

A. Via the Maybrook route.

[fol. 1197] Redirect examination.

By Mr. Keenan:

Q. Will you turn to Exhibit 13, indicate what figures are erroneous, correct them, and explain whether or not you have got your work sheets with you on the basis of which you are supplying us with this information?

A. On Exhibit 13, the fourth column over starting with 1942, under the heading "Manufactured and Miscellaneous", each one of those figures should be superseded by a "1".

Mr. Carpenter: You mean preceded?

The Witness: Preceded by a "1", so that you start with 1942, you have got 1,162,672,224, and ending at 1957, you have 1,660,076,995.

By Mr. Keenan:

Q. And the figures therefore in the manufactured and miscellaneous column of Exhibit 13 for the years 1942 to 1957 are all in excess of one billion, is that correct, sir?

A. That is correct.

Q. And how did you determine this—what are you holding in your hand?

A. I found one of my work sheets here which drew off that and other accounts, and—

[fol. 1198] Q. From the freight commodity statistics?

A. That is correct, and the percent shown in the column headed 1959, the fifth column headed 1939 equal 100 are correct.

Q. There are no other changes in the exhibit to make it accurate other than those you just made, is that right?

A. That is right.

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Further Cross examination.

[fol. 1201] Exam. Kane: Off the record.

(Discussion off the record.)

By Mr. Carpenter:

Q. Mr. Hartmann, you have given me, have you not, the work sheets, or at least some of the work sheets that were used to prepare your Exhibit 23?

A. Yes.

Q. Now, looking at those, Mr. Hartmann, it would appear to me—and you can check with me whether I am right about this or not—that what you have done is to review the separate carload consignments that were handled by your railroad during the six months, the last six months of 1957 to Chicago, Illinois, and you have shown the total revenue received from that transportation.

Under the column headed revenues under Section 2, all commodities, what you have done there is to reflect the amount by which the revenues would be reduced by the application of the Section 2 rates only to that traffic which paid a higher rate than would have been computed under the Section 2 proposed rates here under investigation?

A. The reduced revenue is only applied to that, yes. Otherwise there was no change in the revenue as previously received.

Q. So that this exhibit would reflect the revenue effect upon your line on the basis of that traffic consist, by reason of the fact that these proposed rates would mark the highest level of any commodity rate which your line would [fol. 1202] assess?

A. I don't think that is quite correct, Mr. Carpenter. If you would have followed my testimony, I said—or I believe I did—that this may be incorrect to the extent that some of this traffic may be in cars other than box cars, and, further, that some of this traffic may be restricted, but assuming it was all subject to Section 2, your assumption would be correct.

Q. And what that means, then, is that these proposed rates would be the highest charge that your railroad would apply for any commodity, beyond the restricted group, which was shipped in the weight amounts that are specified by 20,000 pounds to 70,000 pounds, by ten thousand pound jumps.

That is correct, is it not?

A. Loaded in box cars and limited to no other service other than the straight movement between A and B, yes, sir.

[fol. 1206] Q. Your existing forwarder rates, or your existing all commodity rates used by the forwarder, the \$2.04 from Boston to Chicago has a minimum weight of 30,000 pounds, does it not?

A. Correct.

Q. Now—

Mr. Keenan: Section 1, right?

Mr. Carpenter: Section 1.

By Mr. Carpenter:

Q. Now, the 30,000 pound rate under Section 2 from [fol. 1207] Boston to Chicago is what, \$1.54?

A. \$1.54.

Q. Now, that would be \$462 a car, wouldn't it?

A. Correct.

Q. Now, if I take that \$462 and divide it by \$2.04 which is the existing Section 1 rate, I would come up, would I not, with the weight at which it would become cheaper for the forwarder or shipper to ship under the Section 2 rather than the Section 1 rate?

Mr. Keenan: May I hear that question?

(The question was read.)

The Witness: I don't think you could do that.

By Mr. Carpenter:

Q. You don't think so? Well, now, you compute for me, if you have a pencil there, how much it would cost a shipper, a forwarder or shipper's cooperative to ship 22,900 pounds at Section 1 and at Section 2.

A. You can't ship 22,900 pounds in Section 1, Mr. Carpenter. That is the point I made, I don't think you can do it that way. You have got to ship 30,000 pounds at Section 1.

Q. I think you are right.

A. You may not have it in one car, but you have got to ship 30,000 pounds in Section 1.

Q. And it is your position that under Section 2 you must have the traffic in one car?

A. Definitely.

[fol. 1209] Q. Your Exhibit 25, if you please. That refers only to forwarder traffic that originated on the New Haven, and was moved to connecting carriers?

A. That is correct, sir.

Q. I was struck by the tremendous reduction there in the average net tons per car from 1947 to 1958. Was that all due to that promiscuous loading rule, the marriage rule?

A. No, it isn't. There was a change in the general forwarder rule, the general rules in the all commodity tariff, and not due particularly to the promiscuous loading.

Q. What was that change you are talking about?

A. I would have to check that out. I know there was a change, Mr. Carpenter. We made various changes in the rules in the tariff so as to permit greater flexibility to the forwarder in loading more than one car.

Q. What is the purpose of that flexibility you are talking about to the forwarder—to give him more frequent sailings [fol. 1210] or departures?

A. No, in many cases it was a combine of our economics and his economics, such as this marriage, and that wasn't what I was referring to, but I will use that as illustrative for the moment, his marriage of a car on a shipment, let's say, starting out of Boston and marrying it in New Haven.

We find it would be a lot cheaper to put in a car at New Haven than to stop that car from Boston.

Q. Of course with respect to his economics, that gave him the opportunity of shipping half a car out of Boston and a half out of New Haven rather than a full car out of each.

A. No, it doesn't give him anything, except he may in some instances receive a better service than he would otherwise. Otherwise it gives him no economic advantage.

Q. If he didn't have a full car at one destination out of Boston and not a full car out of New Haven, he couldn't move either one of them, could he, unless you did it by the marriage?

A. No, he would stop that car, Mr. Carpenter, and get the same rate. He gets no difference in the rate whether we use one car or two cars. He pays the same rate.

Q. All right, then, if you started a car out of Boston and had to go down to New Haven, he would lose a day.

A. That is what I say, he may lose some time.

Q. So what it does it gives him the same sailings on a [fol. 1211] half a car from each place.

Oh, well, go ahead. Do you know that rule you are talking about, do you remember it? I thought I kept abreast of those rules, and I can't remember.

A. Let me say this. Just prior to that; they were subject to this Order 68—

Mr. Keenan: Service Order 63?

The Witness: Service Order 68, and we changed the rules right at that time. I can't tell you just exactly what it is, but I can check that out for you.

By Mr. Carpenter:

Q. All right, if you will, please.

Exhibit 26, which is a duplicate of Exhibit 8, shows that your—

A. Just a minute, Mr. Carpenter. I have one other memory now in regard to that. Just prior to this, too, I think the Commission, or just subsequent to 47 or in that area, the Commission finally came through with a fifty percent rule. I think that also had a bearing on this all commodity.

Q. What was the fifty percent rule?

A. The fifty percent rule was to eliminate the hauling of all commodity cars, any one commodity of which would be in excess of fifty percent.

Q. Do you mean the mixture rule?

A. That is right.

Q. Well, you put that in. That wasn't put in by the Commission, was it?

[fol. 1212] A. Yes, sir, it was the Commission's decision. That was in the old freight forwarder case.

Q. That wasn't a matter of loading.

A. It had a lot to do—

Q. It was a question with respect to the application of the rates.

A. No, Mr. Carpenter, let me point this out. They could ship a car, let's say, from an intermediate point at that all commodity rate, it could have been steel, maybe 80,000 pounds, which helped to increase these average minimums.

Q. My point was, Mr. Hartmann, it would only be with respect to the consignment, since you had the promiscuous loading rule and marriage rule in, the fifty percent rule would only apply to the single consignment, and the forwarder would be free to split that any way he wanted?

A. Prior to that decision, he didn't have to split it. He could take straight cars from any point and ship them out and match them up with his other freight. .

Q. Well, he could still do it, so long as he split the consignment up. It didn't make any difference, from what you have told me it doesn't make any difference how it is loaded, it is all just a single consignment, and it is a paper consolidation.

A. No, that is not entirely so, Mr. Carpenter.

[fol. 1215] Q. Now, your Exhibit 28, please. Do you have the figures that you utilized this morning when you computed for us the revenues which the New Haven would have received if the traffic was formerly moved in box cars at the standard rates rather than the Section 2 rates, and continued so to move?

I think you computed it out at \$207,286.

A. \$207,284.62.

Exam. Kane: I am sorry, I don't quite understand what that represents.

The Witness: That represents the revenue that we would have received of \$178,529.42 shown in the first group in column 8, and fifty percent of the revenue in that second column for the second group.

[fol. 1216] Exam. Kane: Oh, I remember that now.

By Mr. Carpenter:

Q. Fifty percent of the second group in the same column?

A. That is right.

Q. That is 57,000—you took fifty percent of that. Now, I took it from those that this is traffic that formerly moved by the service of the New Haven and you have a reasonable assumption that it would have moved or continued to move had you not put in the Section 2 rates, is that right?

A. The last assumption is not correct, no. The first is right.

Q. Well, the first is it formerly moved by the services of the New Haven—that is traffic by shippers that would formerly—let me strike that and start over.

The first group, your traffic that previously moved via rail in box cars, was traffic that you handled during the period covered by Exhibit 28, and which was tendered you by shippers that had formerly been tendering you their traffic at your standard rates?

A. That same traffic at the box car rates, yes.

Q. The standard box car rates?

A. That is correct.

Q. And with respect to the second group, that was traffic that was tendered the New Haven by shippers during this [fol. 1217] period of time, which shippers had formerly been tendering traffic not only to the New Haven in its box car service, but also to other carriers, such as motor carriers, is that correct?

A. That is correct.

Q. So you say that—you take fifty percent of that traffic would have been traffic that you might have expected to have moved in your box car service at the standard rates and not the Section 2 rates?

A. I say that fifty percent of that traffic we did move via rail in box cars prior to the establishment of these rates, not that we might have moved in the future.

Q. Well, again, there you were worrying about the possibility of diversion.

A. It is a fact, it isn't a possibility.

Q. I understand your position on it.

Now, with respect to this \$207,284.62, you compared that to the figure in the fourth column at the bottom, which is \$207,414.15.

A. Yes, sir.

Q. Which is the revenue you actually received from transporting all of the traffic shown on Exhibit 28?

A. That is correct.

Q. And that I think your counsel asked you if it wasn't a fact that you had to transport 2,430,664 pounds, is that, additional traffic in order to come up with that \$207,414 [fol. 1218] revenue. Do you see that figure?

A. Yes.

Q. And I think you answered yes, didn't you?

A. Yes.

Q. As a matter of fact, you also would have had to transport fifty percent of the 3,725,627.

A. That is correct, and I answered that one, too.

Q. Well, now, let's take half of that. I get 1,862,813 pounds.

A. Correct.

Q. Am I wrong?

A. No, that is correct.

Q. If I add that to the 2,430,664 I come up with 4,203,477 pounds of additional traffic that had to be transported at the Section 2 rates in order to get the same revenue as the traffic that we had been talking about before which had formerly moved by rail box car?

A. That is correct.

[fol. 1225]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

Transcript of Hearing—Wednesday, October 28, 1959

Hearing Room "F",

Interstate Commerce Commission
Washington, D. C.

Met, pursuant to adjournment, at 9:30 a.m.

Before:

William J. Kane, Examiner.

Appearances:

(As heretofore noted.)

[fol. 1227]

Proceedings

Exam. Kane: Come to order, please.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

I understand, Mr. Keenan, you have a statement to make.

Mr. Keenan: Mr. Examiner, late last evening, Mr. Hartmann learned that he had a sudden illness in his family, and he left for New Haven by train and by plane. I understand

that he will be completely unable to return during the balance of the week.

I have discussed this with Mr. Carpenter, and after he reviewed what he had done by way of cross examination yesterday, he reached the conclusion, as I understand it, that in the circumstances he is content to waive further cross examination, and, of course, I will have no further question on redirect of Mr. Hartmann, and because of Mr. Carpenter's kindness in obliging us in this situation, we can proceed with the hearing.

Mr. Carpenter: There is just one other thing, if the Examiner please.

I would like it understood that we may refer to the statements of the Interstate Commerce Commission that are referred to in Exhibit No. 1, which is the testimony of Mr. Hartmann. I did have some questions respecting those, but as long as I can refer to the statement, I think it would take care of the matter.

There are several of those statements, 5-58 and 3-58 are [fol. 1228] two that I remember.

Mr. Keenan: Those are the Commission's Cost Section statements. That is agreeable to the Respondents, Mr. Examiner.

In addition, underlying Statement 5-58 is the so-called cost bible that is Cost Section Statement 4-54.

Is it agreeable that we may refer to that, too, as an underlying document?

Mr. Carpenter: Surely.

Exam. Kane: It may be so understood.

Am I to understand now that there are no further questions with respect to Exhibit No. 1?

Mr. Keenan: That is correct, Mr. Examiner.

Exam. Kane: That was offered for identification. Do you desire at this time to offer that in evidence?

OFFERS IN EVIDENCE

Mr. Keenan: Yes, Mr. Examiner, and I would also like to offer in evidence Exhibits 2 through 30.

Exam. Kane: Is there objection?

Mr. Carpenter: I have no objection, if the Examiner please. I do want to comment, however, that many por-

tions of Exhibit No. 1 are argumentative, and I trust that they will be treated as such. Otherwise I do not object.

Exam. Kane: Then Exhibit Nos. 1 through 30, inclusive, are received in evidence.

(Respondent's Exhibit Nos. 1 to 30, incl., Witness Hartmann, were received in evidence.)

[fol. 1229] ROBERT RICKER was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name and address.

A. My name is Robert Ricker. I reside in Farmington, Conn. I am employed by the Stanley Works, New Britain, Connecticut.

Q. What is your position with the Stanley Works, Mr. Ricker?

A. I am assistant to the general traffic manager.

[fol. 1231] Q. Now, before the Section 2 rates—before you began to use them prior to September 4, tell me how this tonnage moved, or rather via what means of transportation this tonnage moved to Chicago?

A. It moved to direct customers via truck, rail and freight forwarder.

Q. Was that l.c.l. rail?

A. Yes, about 22 per cent, I would say.

Q. And what per cent by freight forwarder?

A. About eight per cent.

Q. And what per cent by truck?

A. About 69 per cent.

Mr. Carpenter: May I have those figures again?

Mr. Keenan: 69 per cent by truck, 22 per cent l.c.l. rail, and nine per cent freight forwarder—or eight per cent freight forwarder, I guess you said?

The Witness: Yes. Correction, that is nine per cent freight forwarder, I am sorry.

By Mr. Keenan:

Q. Have you had much occasion to use the rates in Section 1 of the 4501 tariff?

A. Before Section 2 became effective, we took advantage of it only to a limited extent.

Q. Do the facts you have just given me fully describe the change in your operations from New Britain to Chicago produced by the Section 2 rates?

[fol. 1232] A. Not completely. We have a warehouse at Melrose Park, which previously we had been loading approximately 60,000 pounds per car, now we are averaging closer to about 75,000 pounds per car.

Q. Tell me what, if anything, in your traffic distribution—I will withdraw that question.

Tell me about the plant at Wallingford which you speak—what does it produce?

A. The Stanley-Judd Division of Stanley Works is located at Wallingford, Connecticut. It manufactures a line of drapery hardware.

Q. What kind of hardware, drapery—curtain poles, fixtures, et cetera?

A. Yes.

Q. And what change in the traffic distribution from that plant to Chicago, if any, was produced by the Section 2 rates?

A. Prior to Section 2, we were loading Plan II trailer-on-flatear, and motor common carrier truckloads at about 28,000 pounds per load. Since the incentive rates have been established, we are now loading a minimum of 70,000 pounds per car, and find that our tonnage has increased as well as the average weight per car.

Mr. Keenan: You may cross examine.

Cross examination.

By Mr. Carpenter:

Q. What did you mean when you say your tonnage has [fol. 1233] increased as well as the average load per car?

A. Well, speaking of Judd, specifically, taking the period—

Q. That is the Works that you spoke of?

A. Right. .

Q. Yes.

A. Well, it applies to the whole operation, but Judd specifically I just happened to be looking at the exhibit now, from January 1 to June 22, 1959, there were 23 weeks and we shipped an average of 28,000 pounds weekly.

Since the incentive rates have been established, the 15 weeks from June 22 to October 1, we were loading, approximately 34,745 pounds a week.

Q. Your business has increased?

A. The business has increased.

Q. You don't ascribe that to the establishment of these Section 2 rates, though, do you?

A. Well, we like to think that because the loads are getting there in greater quantity that the product is more available to our customers in the Chicago area.

Q. You didn't have any trouble before getting as much traffic moved out there as you needed out there, did you?

A. No, it was moving out there all right.

Q. Now, does that drapery, curtain rods and material of that sort move to this warehouse at Melrose Park?

A. It does move to Melrose Park, yes.

[fol. 1234] Q. Is that where you handle that?

A. That is right.

Q. You did handle that before the Section 2 rates?

A. No, before Section 2, approximately, we had a warehouse at Detroit as well as at Chicago.

Q. What did you do with the warehouse at Detroit?

A. We have now closed up the Detroit warehouse and are funneling everything through Chicago.

Q. Which would account for at least a part of that increase that you are talking about in traffic moving to Chicago, would it not?

A. That is right, we find it more economical to do so.

Q. You ship to Chicago and then ship it back to the Detroit area to take care of your customers?

A. We backhaul as far as Detroit, yes.

Q. Is that the way you distribute that, it all goes from the factory to that warehouse at Melrose Park, and then you ship out in small quantities to the customer?

A. Whenever the stock is available at Melrose Park, Illinois, we ship from stock. When it is not available, we ship direct from the factory warehouse.

Q. And how do you ship out of Melrose Park, what type of service do you use?

A. Generally motor common carrier.

Q. When you ship directly from the factory, that would [fol. 1235] be in these l.c.l. quantities, or l.t.l. when you are shipping directly to the customer?

A. That is right, sometimes truckloads.

Q. That would be rare, would it not, that you ship a whole truckload of your curtain rods to a customer?

A. No.

Q. It sometimes happens?

A. Frequently.

Q. Frequently?

A. Yes.

Q. It is a lot of curtain rods, isn't it?

A. That is right, we like to feel that we have a pretty good size portion of the market.

Q. You stated that with respect to these curtain rods prior to September of this year you had been using Plan II, which is a trailer-on-flatcar service of the railroads, and also a motor carrier service in transporting the products to the warehouse in Chicago?

A. That is right.

Q. Is the same true with respect to Detroit?

A. Detroit was also partly motor common carrier and partly Plan II.

Q. Are you familiar at all with the Plan III service of the railroads?

A. Yes.

[fol. 1236] Q. Did your company ever use that?

A. We have not yet used it, no.

Q. You never used it?

A. No, we haven't.

Q. Did you ship any of these curtain rods by box car service?

A. We presently ship by box car, but not to Chicago or Detroit prior to the establishment of the Section 2 rates. For example, we have a warehouse at Dallas where we ship by box car.

Q. I was concerned with Chicago on that. You had not been using a box car service for that traffic prior to the establishment of these Section 2 rates, is that right?

A. That is correct.

Q. Did you have a rate on the traffic for box car movement?

A. No, it was class rate.

Q. It was a class rate?

A. That is right.

Q. You had a commodity rate by Plan II service of the railroads, is that right?

A. That is correct.

Q. Can you tell me what your rate was for the Plan II service, how much a hundred pounds?

A. Yes, \$1.66.

Q. \$1.60?

A. \$1.66.

Q. And shipping at the 70,000 pound rate, how much [fol. 1237] would that be under your Section 2 rate?

A. 87 cents.

Q. The motor carrier rate, I take it, was the same as the Plan II rate of the railroads?

A. That is correct.

Q. Now, with respect to your traffic coming out of New Britain, Connecticut, that is your builders' hardware, electric tools, hand tools and box strapping, you said that prior to September, when you started using the Section 2 rates, you had been shipping there in railroad box cars with a minimum weight of about 60,000 pounds, or average weight. I beg pardon—you didn't say "minimum"?

A. 59,386.

Q. Now, what sort of rate did you have on that? Was that a commodity rate?

A. Yes.

Q. And can you tell me what it was, please?

A. Well, the hardware products, hinges, etc., carried a rate of \$1.29 for the most part, and a small portion, a small percentage went at the Section 1 rate of \$2.02.

Q. That would be the higher rated items such as electric drills and electric sanders and that sort of thing.

A. Well, let me say that we have never shipped electric drills by box car previously. That would be brass hardware, NOIBN, and items of that sort.

[fol. 1238] Q. Then these cars made up of 60,000 pounds, you paid the Section 1 all commodity rate of \$2.04 on a small portion of the contents of the cars and \$1.29 on the major portion, is that right?

A. About 96 per cent would be at the \$1.29 rate.

Q. 96 per cent?

A. Yes.

Q. And four per cent at the other?

A. That is right.

Q. Now, the rate from New Britain to Chicago under Section 2 is again 87 cents.

A. That is correct.

Q. Did you mean when you told me before that your shipments to the warehouse in Chicago had increased, did you mean with respect to those shipments that that included the traffic from New Britain as well as the traffic from Wallingford? What I am trying to get is this—

A. Both individual tonnages did increase.

Q. Well, what was the average shipment or the average volume of shipment to Chicago, that is the Chicago warehouse, from New Britain prior to September 1, or prior to the time you closed the Detroit warehouse?

A. Oh, getting back to Judd?

Q. No—

A. Let me clarify it. The Detroit warehouse was only [fol. 1239] for Judd drapery hardware products.

Q. All right. What was the average shipment to your Chicago warehouse from your Stanley Works at New Britain prior to the time you started using the Section 2 rates?

A. The average was 59,386 pounds per car.

Q. And how many cars a week?

A. Well, in a 23-week period for hardware, we had an average of 93,000 pounds weekly.

Q. 93,000 a week?

A. That is right. Subsequent to that period, we have 15 weeks at 155,500 pounds weekly, an increase of about 60,000 pounds per week.

Q. And that is over a 15-week period?

A. That is right.

Q. Now, you told us that you also had been shipping directly to customers out of your factory at New Britain?

A. That is right.

Q. Prior to using the Section 2 rates?

A. That is right.

Q. Have you discontinued shipping directly to customers out of there?

A. Just an insignificant amount now goes direct to customers by less truckload or less carload or forwarder from New Britain since the Section 2 rates have been established. We now forward them to Chicago for break-bulk and distribution.

[fol. 1240] Q. And distribute out of there by motor truck?

A. Generally motor common carrier from Chicago throughout the Midwest.

Q. Do you distribute to any customers directly from New Britain, other than in the Midwest?

A. Other than in the Midwest?

Q. Yes.

A. Oh, yes.

Q. In other words, you take care of the Eastern part of the country by direct shipments, you don't have a warehouse in the East?

A. We have a warehouse at Atlanta that will open January 1. We have one at Dallas, Los Angeles, San Francisco and Detroit.

Q. When did your warehouse—

A. Cross out Chicago, now.

Q. When was the warehouse in Chicago opened?

A. The Chicago warehouse opened I think about a year and a half ago.

Q. So that your company has just recently gone into this business of establishing warehouses to which you will ship in so-called consolidated lots and make distribution out of those?

A. No, let's say that we have recently inaugurated a program of company ownership of warehouses. We had previously had warehouses at Chicago.

[fol. 1241] Q. Public warehouses?

A. Public warehouses.

Q. And you had shipped directly to customers in that area as well—you are increasing your warehousing activities, apparently, is that right?

A. We are attempting to intensify it because of the nearness of the warehouse to the customer and the availability of stock, and so forth.

Exam. Kane: Do I understand you to say that you closed the warehouse at Detroit?

The Witness: We had a drapery warehouse at Detroit, sir, and we closed that about six months ago.

By Mr. Carpenter:

Q. Was that a company-owned warehouse—

A. No, that was a public warehouse.

Q. And you just transferred that drapery warehousing to the one that you own in Chicago?

A. In Chicago, that is right.

Mr. Carpenter: That is all, thank you very much.

Mr. Keenan: Mr. Examiner, I have some questions that do not entirely qualify as redirect.

Mr. Carpenter: I am not very technical. Go ahead.

Mr. Keenan: I know you are not.

Redirect examination.

By Mr. Keenan:

Q. Mr. Ricker, you filled out a questionnaire for Mr. Hartmann, didn't you?

[fol. 1242] A. Yes, I did.

Q. Do you have your copy handy?

A. Yes, I have.

Q. I would like to have you give me some of the information on it.

Prior to June, Mr. Ricker, tell me how you performed the loading of freight cars or trailers or other means of transportation, or whether it is performed by the carrier such as the highway carrier or rail carrier?

A. We, of course, load our own box cars with our own personnel. Highway trailers are loaded generally by the truck driver, except that if we happen to have spare man kicking around, we might put him in there to help load at our convenience.

Q. And Plan III trailer?

A. Plan III would be loaded by our own personnel.

Q. That is what you used prior—

A. We had not used Plan III, of course, but if we were to go into it, we would have to load.

Mr. Carpenter: Plan II, you would use?

By Mr. Keenan:

Q. Now, when you load the rail box car, tell me what your cost is on direct cars without bulkheads.

A. Direct cars without bulkheads, 3.8 cents per hundredweight.

Q. And on mixed cars, including the necessary bulkheads and handling costs?

A. 7.9 cents, exclusive of unloading.

[fol. 1243] Exam. Kane: Exclusive of what?

The Witness: Of unloading the cars. That is just loading, blocking and bracing.

By Mr. Keenan:

Q. Now, when you do load a highway truck, when that has happened, what is your loading cost there?

A. About 2.7 cents.

Q. This is out of your New Britain origin?

A. That is right, per hundredweight.

Q. And when you do load a highway truck out of Wallingford, what is your cost?

A. 3.2 cents per hundred pounds.

Exam. Kane: What is that last question and answer, will you read that, please?

(Question and answer read.)

By Mr. Keenan:

Q. What advantage do you find in using highway service as against rail service, if any?

A. Speed, flexibility, lower minimum weight, carrier loading and unloading, less transit damage, and no blocking or bracing expense.

Q. Please describe what effect, if any, past ex parte increases have had on your allocation of traffic between truck and rail?

A. Well, each ex parte increase has resulted in some diversion of traffic from rail to truck or other mode of transportation.

Q. When the origin or destination—and I direct your attention to Question 11, Mr. Ricker—when the origin or [fol. 1244] destination is off track and the shipment weighs 50,000 pounds or more, would you use the Section 2 box car rates or the new Plan III TOFC rates, and tell me why?

Mr. Carpenter: Well, now, I am going to object to that. As I understood this witness, he doesn't make any such shipments except to destinations which are on track. It would be purely speculative on his part. He hasn't talked about any traffic that would move in quantities of that sort except to his own warehouse, which is on track.

Exam. Kane: I don't think there is any evidence here with respect to off track operations at all.

The Witness: Other than the pool car operation, sir.

Exam. Kane: Counsel's objection is well taken. The objection is sustained.

By Mr. Keenan:

Q. What has been your damage experience with box cars moved under the Section 2 rates, Mr. Ricker?

A. We have had no claims for damage since we began using the 70,000 pound rates in June, 1959.

Q. Does the volume or the weight loaded in a rail car affect the likelihood of damage in your experience?

A. We have loaded some of these cars in excess of 100,000 pounds, and have not had any damage. Frankly, we did so with our fingers crossed, because it would seem

how could we do it without having crushing damage or something of that sort, but we have not had any.

[fol. 1255] EDWARD N. MAYER was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name, address, and employment.

A. Edward N. Mayer. I reside at Plymouth, Massachusetts. I am general traffic manager of Plymouth Cordage [fol. 1256] Company, Plymouth Cordage Industries, Inc.

Mr. Carpenter: Plymouth Cordage?

The Witness: That is right.

By Mr. Keenan:

Q. Mr. Mayer, are you familiar with New Haven's Tariff F-4501 and the supplements, which is Exhibit 2 in this proceeding?

A. Yes, sir.

Q. At some time has the Plymouth Cordage Company forwarded traffic to Chicago or St. Louis which was moved under the provisions of Section 2 of that tariff?

A. That is right.

Q. Will you go ahead and tell me about it, Mr. Mayer, and give me the facts?

A. The rates of Section 2 became effective on September 2, 1959, and since that date we moved seven cars.

Mr. Carpenter: May I have that read—September 2?

The Witness: September 2, that is right.

By Mr. Keenan:

Q. Just to make that clear, those rates became effective at Plymouth, Massachusetts, September 2?

A. That is right. I thought we were talking about Plymouth. Since that period we moved seven cars totaling 432,143 pounds.

Q. Is that the period from September 4 to October 22 of this year?

A. September 4 to October 22 of this year, that is right.

Mr. Carpenter: What was the total weight?
[fol. 1257] The Witness: 432,143 pounds.

By Mr. Keenan:

Q. Now, tell me what, if any, weight in these cars moved solely as the result of the Section 2 rates?

A. Can I have that question again?

Exam. Kane: Will you read the question, please?

(Question read.)

Mr. Keenan: I want to withdraw the question. It is not clear.

By Mr. Keenan:

Q. How much tonnage did you have in these cars, if any, because of the Section 2 rates, Mr. Mayer?

A. We have an additional tonnage of 101,501 pounds through the application of Section 2.

Q. Before Section 2 rates became available to you, how did this 111,501 pounds move?

A. By motor truck, common carrier.

Q. Tell me what, if any, advantage there is to your being able to thus move this traffic in box cars and tell me what happens to it when it gets out to Chicago?

A. One of the advantages, we have more frequent sailings with the additional accumulation of tonnage which makes it more economical, plus a closer inventory control, and when these cars arrive at Chicago, we operate our own warehouse, and we transship from that warehouse to the points beyond, which corresponds to the increased weight to each car.

Q. Do I understand you correctly that now you are using [fol. 1258] rail transportation to move tonnage with which you serve peripheral parts of your market that heretofore you have had to serve by use of truck transportation?

A. That is true, and we still use common carrier trucking.

Q. Mr. Mayer, have you made any use of Plan III TOFC service of New Haven Railroad?

A. We have not.

Q. Please state why.

A. Well, the equipment wasn't available to us, number one.

[fol. 1266] PHILIP SMITH was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Will you please state your name, address and employment?

A. My name is Philip Smith. I live in Seymour, Connecticut, and I am the Acting Traffic Manager for the Sponge Products Division of the B. F. Goodrich Company.

Q. Where is the plant located?

[fol. 1267] A. Shelton and Derby, Connecticut.

Q. Are you familiar with Tariff F-4501, Exhibit 2 in this proceeding, and supplements?

A. Yes, I am.

Q. When did you first begin to use the Section 2 rates there, Mr. Smith?

A. In September of 1959.

Q. What traffic did you move under these rates, and to where?

A. We moved a sponge rubber cushioning material to Chicago.

Q. How much, Mr. Smith, and with what frequency?

A. You mean how much moved under these rates?

Q. Yes.

Mr. Carpenter: Where?

Mr. Keenan: To Chicago.

The Witness: Well, the rough figures for this period have been about 153 tons.

By Mr. Keenan:

Q. What period would that be?

A. That is in the period from September, approximately September 10 to date.

Q. And do you have information concerning the average loading per car?

A. It has averaged approximately 58,000 pounds.

Q. Prior to September, 1959, how did this tonnage move, Mr. Smith?

A. It moved by motor carrier.

[fol. 1268] Q. Do you still use motor carrier service to Chicago for some of your tonnage?

A. Yes, we do.

Q. And what is the average weight of the load that still moves to Chicago by truck.

A. Approximately 24,000 pounds.

Q. Is the tonnage you are moving under Section 2 a straight carload?

A. Yes.

Q. If the Section 2 rates were limited—withdraw that. Are you familiar with the 60 per cent mixing rule that limits the availability of Plan III TOFC rates?

A. Yes.

Q. If the Section 2 box car rates had a similar mixing rule, would you be able to make use of the Section 2 box car rates?

A. No, we wouldn't.

Q. Did you fill out a questionnaire for Mr. Hartmann some time ago, Mr. Smith?

A. Yes, I did.

Q. Will you tell me what the difference in cost is for you between loading a highway truck and a rail box car?

A. It is actually difficult to say. We have two loading locations for box cars, one of which has a loading cost of very near the truck cost, and one of which is quite a bit higher, but I would—on an average our highway truckload-
[fol. 1269] ing cost at the current time is about 20 cents per hundred pounds, and a rail box car loading cost of an average of 27 cents per hundred pounds.

Q. What advantage do you find in using highway service versus rail service?

A. Service to customers who don't have sidings is a major one, driver aid in loading and unloading, better transit time, more flexibility, lower minimum weights.

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[fol. 1270] Mr. Keenan: At the moment I want to ask as to Question 15.

By Mr. Keenan:

Q. If the Interstate Commerce Commission approves the Section 2 box car rates or allows them to continue, and if Plan III rates TOFC continue as now published, will you please state the extent to which each will be used, and the reasons therefor?

A. I will read my answer that I have written down here, if I may.

Q. Give the best answer you can, if the best one is the one you have down, read that?

A. I feel there will be a large increase in tonnage moving via rail, primarily based upon lower transportation costs, and I also feel that we would be able to increase our market in the Chicago area, for example, based upon this lower delivery cost. We have competition which produces that location nearer to Chicago than our Shelton plant, and therefore can sell in that market at a lower price than we have been able to serve.

I also think we would use Plan III if it became available on a regular basis because of people who don't have rail sidings but could take sizeable shipments in Plan III cars.

Cross examination.

By Mr. Carpenter:

[fol. 1274] Q. Now, you stated in response to the question by Mr. Keenan that you had not used Plan III rates because of the mixture provision, is that right?

A. No, I said if the mixture provision was in the tariff, we could not use the rates.

Q. Section 2 rates you couldn't use, and also I took it that you couldn't use Plan III rates, because there is a mixture provision there?

A. If there was one in there.

Q. Are you familiar with the Tariff under Plan III?

A. No, I am not. I know Plan III, but I don't know what the tariff provides.

Q. Well, then, your statement with respect to the question that Mr. Keenan asked you and the reply which you read from this questionnaire would not refer to the Plan III at all, would it, if you are not familiar with it?

A. I was under the impression that Plan III rates did not require mixture loading. If they do, I am mistaken.

[fol. 1275] Q. Well, are you shipping to receivers in Chicago with sidings, who have sidings?

A. Yes, we were, and we are.

Q. You are now, too?

A. Yes.

Q. Well, why did you use the motor carrier rate and not the box car rates, if the rates were identical?

A. Well, for the reason that I stated about flexibility and lower loading cost, lower minimum weights.

[fol. 1276] Q. You told us, Mr. Smith, with respect to the loading cost that in at least one instance, the loading cost was the same by motor carrier and by box car?

A. That is right.

Q. Still you never used the box car?

A. No, not to Chicago.

Mr. Carpenter: I think that is all I have. Thank you very much, Mr. Smith.

Redirect examination.

By Mr. Keenan:

Q. Regardless of whether it is associated with Plan III or not, what did you understand me to mean by the 60 per cent rule when you told me you couldn't use it?

A. That no one commodity could exceed 60 per cent of the total weight in the car.

Mr. Keenan: No further questions.

[fol. 1277] HERBERT WYATT was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name, address and employment.

A. My name is Herbert Wyatt. I live in New Britain, Conn., I am employed as traffic manager of Landers, Frary, and Clark.

Q. Are you familiar with the Section 2 rates in Tariff F4501, Exhibit 2 in this case, Mr. Wyatt?

A. I am.

Q. Where is your plant, did you say?

A. In New Britain, Connecticut.

Q. And what is manufactured there?

A. Small household electric appliances such as percolators, toasters and irons, vacuum bottles and lunch kits, and food choppers.

Mr. Carpenter: Food choppers?

The Witness: Food choppers.

By Mr. Keenan:

Q. Is the output of that plant forwarded, among other places, to Chicago and St. Louis?

A. It is.

Q. Mr. Wyatt, please tell me what, if any, change in your traffic-distribution patterns was produced by the availability to you of the Section 2 box car rates. Do so by describing what went on before the Section 2 rates were [fol. 1278] available and telling us what happened afterwards?

A. Prior to the Section 2 rates, and for a period from July—I beg pardon, from March 26 to July 15—

Q. What year, sir?

A. 1959, the tonnage that we forwarded to Chicago and St. Louis moved entirely by truck. After the effective date of Section 2, it moved entirely by rail.

Q. Prior to the time it began to move by truck, did it move by rail?

A. It did.

Q. In other words, you had adopted the policy of taking the rail tonnage off rails and putting it on trucks, if I understand you right?

A. That is correct.

Q. What were your reasons for preferring truck service at this time?

A. A differential in the freight rate advantageous to truck.

Q. Were you—were there any service comparisons that made any difference to you?

A. Yes, it was also a faster service.

Q. You say that this tonnage came back to rails after Section 2 rates became available, right?

A. That is right.

Q. Now, from the time you resumed because of railroad transportation under Section 2 rates, tell me what your [fol. 1279] volume and frequency has been to Chicago and St. Louis.

Mr. Carpenter: Is this under Section 2?

Mr. Keenan: Subsequent to July 16, 1959, is that right, Mr. Wyatt?

The Witness: That is correct. The average is two to three carloads a week. The total tonnage for the period from July 15 to October 19, 1959, was 991 tons.

By Mr. Keenan:

Q. Now, what was your average loading, your average rail loading per car, Mr. Wyatt, prior to June of 1958 when you were still using rail transportation?

A. 30,000 pounds.

Q. What has it become since you have begun to use Section 2 all commodity box car rates?

A. The average has been 44,000.

Q. Now—

Exam. Kane: You said average railroad loading prior to June of 1958. Was that the year you had in mind?

Mr. Keenan: I believe so, Mr. Examiner.

Exam. Kane: In other words, the average was 30,000 pounds by rail prior to June, 1958? Am I correct in that year?

By Mr. Keenan:

Q. Well, Mr. Wyatt, suppose we change it to prior to April, 1959, 30,000 pounds.

A. It was still 30,000 pounds.

Mr. Keenan: Thank you, Mr. Examiner.

By Mr. Keenan:

Q. Now, did you hear Mr. Mayer's testimony, Mr. Wyatt?
[fol. 1280] A. Yes.

Q. Did you hear him say that the Section 2 box car rates allowed him to use rail transportation in order to make distribution through Chicago to points beyond Chicago?

A. I did.

Q. If Landers, Frary and Clark has encountered a similar source of experience after it began to use Section 2 box car rates, please describe it to me.

A. Well, our operation is the movement of less carload orders in pool carloads to a break-bulk point with the two points here involved being Chicago and St. Louis, and we include in that car that freight that can be fanned out beyond the break-bulk point at a cost which would be no greater than would be the cheapest means of transportation from New Britain to the ultimate destination. Under the Plan II box car rates—

Q. Plan II or Section 2?

A. Section 2, I beg your pardon. Under the Section 2 box car rates, this has obviously opened up new areas to us where we can include additional tonnage in those cars.

As an example, prior to Section 2, it had never been our policy to backhaul. Now we find that we can backhaul as far back as Detroit and still serve our customers at a rate that would be no greater than would be the through rate from New Britain l.c.l. or l.t.l. to that area.

[fol. 1281] Q. Can you use Plan III, TOFC, Mr. Wyatt?

A. I have never used it. Prior to again Section 2, the difficulty was the fact that we were unable to load sufficient tonnage in anything smaller than a 40-foot trailer.

Q. Was there a scarcity of those?

A. Oh, definitely, at that time.

Mr. Keenan: You may cross examine.

Cross examination.

By Mr. Carpenter:

Q. Mr. Wyatt, what efforts did you make to use Plan III—did you try to get trailers?

A. No, I did not try to get them because of the fact that in my statement I said prior to Section 2.

As far as I know, it was pretty much of a foregone conclusion that the 35-foot box was the largest that could be obtained.

Q. That was just an opinion you had—you made no effort to secure—

A. I made no direct contact, no.

Q. I want to be clear in my mind, now, as to your past use of various types of transportation.

You have been using box car service out of New Britain to Chicago prior to March 26, 1959?

A. That is right.

Q. And was that also a pool car operation?

A. Yes.

Q. And can you tell me, please, sir, what rates you paid [fol. 1282] for that?

A. \$2.02 to Chicago.

Q. That would be all commodity?

A. That is the all commodity rate.

Q. Was any of your traffic rated lower than that if shipped in straight carloads?

A. No.

Q. This is all relatively higher rated traffic that you ship?

A. That is correct.

Q. So you used an all commodity rate in a mixed carload?

A. That is right.

Q. Now, have you ever used the Plan II service?

A. No.

Q. You are familiar with the fact that one is offered?

A. Oh, yes.

Q. Do you know what it is?

A. Vaguely, I know it exists. I have never investigated it too thoroughly.

Q. Have you ever been solicited to use it?

A. No.

Q. How long have you been traffic manager of Landers, Frary and Chark?

A. Eighteen years.

* * * * *

[fol. 1308] JAMES B. GRIFFIN was sworn and testified as follows:

[fol. 1309] Direct examination.

By Mr. Keegan:

Q. Please state your name, address and employment.

A. James B. Griffin, Waterbury, Connecticut, Director of Traffic, Scovill Manufacturing Company.

Q. Please tell me what your experience has been in industrial traffic management.

A. Fourteen years as director of traffic, and approximately sixteen years as assistant director.

Q. Where are the producing points of Scovill Manufacturing Company in New England?

A. Chiefly Waterbury, Connecticut. I shouldn't say Waterbury—the main brass mills are at Waterbury, Connecticut. The tube mill is at Milford, Connecticut, approximately 30 miles distant, and there is a fabricating plant in Oakville, Connecticut, called the Oakville Division, in New England.

Q. What is manufactured at the main works and at the fabricating division—no, just the main works.

A. At the main works it is described as brass milled, semi-processed, which includes the rod, sheet, and wire, and at the main works we have probably the largest cut-up divisions in Waterbury or in New England.

Q. What, if anything, do you have to do with the Charter Oak Shippers Association?

A. I was the organizer and now hold the position of treasurer.

[fol. 1310] Q. And what, if anything, does Scovill have to do with that Association?

A. They are a member of that Association.

Q. Are you familiar with Tariff F-4501, Exhibit 2 in this proceeding, and the supplements that have been added to it?

A. I am, sir.

Q. Please tell me what effect Section 2 rates in that tariff have had on the volume, frequency and distribution to Chicago and St. Louis of the traffic of Scovill Manufacturing Company?

A. At the effective date of July 16, we were shut down for the two-week period shutdown, so we were actually in operation approximately August 15, and taking that period, the last week of August to October 15, the character of our movements have changed quite materially, meaning that our pool car, which qualifies under Section 2, has moved from an average tonnage of 20.6 tons to 36.2 tons.

Q. Is that the only change, Mr. Griffin?

A. The other change is that the Plan II prior to the opening up of our operations—prior to that we were averaging a frequency of about one shipment a week to the Chicago area, and approximately one a month to St. Louis. The tonnage in the Plan II averaged 16.8 per load, in St. Louis was 17.2 tons per load.

Now, since the inception of the Section 2 rates, that has disappeared.

[fol. 1311] Q. Can you tell me what the volume, total volume was that you are now shipping by Section 2 rates—let me withdraw that for a moment.

When you spoke of Plan II, you referred to Plan II TOFC rates?

A. Plan II TOFC.

Q. Could you tell me what the total volume of your tonnage was during—what the total volume of your tonnage was that is now moving under Section 2 box car rates?

A. An average since the beginning, 640 tons.

Q. And that is over what period, Mr. Griffin?

A. From the one week in August up to approximately—from the 20th of August to October 15.

Q. And that is to where?

A. To Chicago.

Q. Mr. Griffin, has Scovill got a private carrier truck fleet?

A. Yes.

Q. Describe it in terms of the types of units and the number of them that you have, please.

A. We own and operate, for internal use and for service of Milford; and for other periods of emergency a total of 70 units. That is divided up into nine heavy duty tractors, and 38 trailers. The remainder is in small unit trucks of pickup character, and of, well, to fit the particular situation in the plant.

Of the trailer units, eight of them are 34 foot, and as I remember, ten of them are 28 foot, and the remainder is divided in 22 foot.

Q. At any time in the fairly recent past, Mr. Griffin, has Scovill contemplated enlarging this fleet by leasing?

A. Yes.

Q. At what time?

A. Early this summer, we practically—well, in fact, we completed a contract and held it up for signing to go into private operation between Cincinnati and Cleveland.

Q. With who would the contract be?

A. Ryder Leasing System.

Q. Cincinnati—to Cincinnati and to Cleveland from where?

A. Between Waterbury and Cincinnati and Cleveland.

Q. It was contemplated that this would be a two-way movement, then?

A. Yes.

Q. What was—what did you intend your westbound tonnage to be—what sort of lading?

A. Rod, sheet, tube, wire, and that is in the brass category, and also the sheet and tube and wire in the aluminum category.

Q. And what did you intend your eastbound lading to be, Mr. Griffin?

A. Scrap.

[fol. 1313] Exam. Kane: This I understand was contemplated in the event of an expansion of your private fleet?

The Witness: No, it was—actually, Mr. Examiner, it was a result of competition, or to preserve our competitive posi-

tion. First off, we feel that the rates from our main works in the Connecticut area as against competition at Indianapolis, Cleveland, Detroit and Chicago, has restricted or contained our market pretty well.

[fol. 1320] Mr. Keenan: My question, if the Examiner [fol. 1321] please, is have you had experience in the course of negotiations with a leasing company which has led you to believe in your expert opinion that private carriage is a feasible thing for your company from Connecticut to Chicago?

May the witness answer that?

The Witness: Yes.

Exam. Kane: I see nothing wrong with that question.

By Mr. Keenan:

Q. Tell me what that experience has been, Mr. Griffin.

A. Based on our—

Q. First of all, tell me when you had that experience.

A. It began early this spring.

Q. With whom did you have this experience?

A. With Ryder Leasing.

Q. Now, tell me what the experience was.

A. The leasing company resented two other places—and this is why I am basing my question—indicating quite a wide difference between the total costs, including all services, insurance, and we also included in the cost studies the cost of the operators, depending what type we would select, which would lead me to believe, comparing with that particular study against the study we anticipate on Chicago that there is a very strong indication that we go into private trucking.

[fol. 1333] Q. Now, one further question before—two further questions before we tie this thing down. Do you have a movement of brass, bronze and copper from Connecticut to Chicago, and a movement of scrap from Chicago to Connecticut?

A. Yes, presently.

Q. And do you know whether you can lease equipment from Ryder Truck Rental for a movement between Chicago and your Connecticut producing points, a private carrier movement?

A. I have no doubt but I could lease them.

[fol. 1338] By Mr. Keenan:

Q. Now, Mr. Griffin, what effect has the publication of Section 2 rates, Section 2 all commodity box car rates between Connecticut and Chicago, had on your plans for private carriage between Connecticut and Chicago, if any?

A. It has a very material effect.

Q. Explain what it is.

A. We have actually suspended additional research, at [fol. 1339] least to the point of bringing it to negotiations, but in short we will keep the cost operations and our negotiation has gone along all the time, but from our best cost studies, it would indicate that it would not be feasible for us to engage in private carriage between Chicago and East St. Louis and Waterbury.

Q. So long as the Section 2 rate is published?

A. That is correct.

Q. Would that opinion concerning feasibility—would your opinion concerning feasibility of private carriage between Connecticut and Chicago remain the same if the Commission were to order the Section 2 all commodity box car rates to be cancelled?

A. No, it wouldn't remain the same.

Q. If a 60 per cent mixing rule were applicable to the Section 2 all commodity rates, could you use them?

A. No, sir.

Q. What would happen to the tonnage that you are now moving under Section 2 if that 60 per cent rule were applicable?

A. It would bring us back into extensive studies of all types of common carriage as well as the feasibility of private carriage.

[fol. 1356] **FREDERICK J. ORNER** was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Your name and address and employment?

A. Frederick J. Orner, 54 Meadow Street, New Haven, [fol. 1357] Connecticut, general manager of freight services, New Haven Railroad.

Q. What is your experience in the transportation industry, Mr. Orner.

A. My first experience started in the summer of 1934. I had about a year and a half in industrial traffic work. I went to work for the New Haven Railroad in November, 1935, in the statistics and research department. In November of 1941 I transferred to the Transportation Department, and remained in the transportation and operating departments continuously from then until June 1, 1959, except for about two and a half years on leave of absence from 1951 to 1953 with the Defense Transportation Administration here in Washington.

Since June 1, I have been general manager of Freight Services.

Mr. Carpenter: June 1 of this year?

The Witness: This year, yes.

By Mr. Keenan:

Q. What are your present duties, Mr. Orner?

A. The present duties, and before describing it, I might say this was a newly established position on June 1, and I have somewhat the same relationship to freight services which Mr. Hartmann has to freight rates and divisions.

Based on my experience in the transportation and operating departments, which gives me a knowledge of the capabilities of the New Haven Railroad and its connections in providing a freight service, and by that I include sched- [fol. 1358] uled car movement, car availability, and so forth, I am now working directly about shippers, and also through our district sales people with shippers in an

effort to determine their service requirements and attempt to work out a freight service on the part of the New Haven Railroad which would be satisfactory both to our patrons, our potential patrons, and the railroad.

Q. Mr. Orner, did you testify in I&S Docket 6992 concerning flat car availability on the New Haven Railroad to be used for the purpose of providing Plan III TOFC service?

A. Yes, sir, I did.

Q. What was your testimony in substance at that time—when did you give it, first of all?

A. I believe it was early in 1959.

Q. 1959 or 1958?

A. I would say approximately within the last year. The exact date I do not recall.

Q. What was your testimony at that hearing in substance concerning flatcar availability?

A. Well, in substance, my testimony at that time was that in addition to a general lack of flatcars to meet all contemplated requirements for piggy-back service, TOFC, we were also hampered in operating and expanding the TOFC service by our clearance limitations.

Exam. Kane: By what?

The Witness: Our clearance limitations.

[fol. 1359] Exam. Kane: All right.

By Mr. Keenan:

Q. What were the periods of operation on the basis of which you reached your conclusions in your testimony in 6992?

A. Oh, a period of a few months immediately preceding that testimony.

Q. Would those few months have been during 1958?

A. Yes.

Q. Now, since then, have you rechecked, or have you more recent data concerning the availability of flatcar equipment on the New Haven for providing Plan III service?

A. Yes, there have been two major changes in the availability. One is that we now have some additional Clejan

type cars, and it is my understanding we will presumably have a few additional cars in the near future. While this increases our total car supply, the usefulness of those cars for any interline operation is restricted by the fact that only one of our connections is equipped to handle the Clejan car.

I believe there has been no change, I believe it has been an insignificant change in our ownership of 40-foot flat carts, which is the other type of piggy-back which we own.

The second major change has been in our clearance situation, and in an effort to describe that somewhat briefly, last summer, I believe in July, we completed certain changes in our physical characteristics which permitted us [fol. 1360] at that time to handle the so-called high cube trailer, a trailer 12 foot six inches high, on the standard, or perhaps I should say normal TOFC flatcar which is about three foot eight inches high. It enabled us to handle that combination between New Haven, Connecticut, and Maybrook, New York, and thus opened up the Maybrook gateway for moving that type of freight as far east as New Haven, Connecticut.

On September 15, we completed some additional changes in our clearance restrictions, which opened up our so-called shore line from New Haven to Providence and Boston, so that we are now able to handle the high cube trailer on the three foot eight, or normal type of flat car, between Boston and Maybrook.

This has not changed in any way our clearance restrictions on our line between New Haven and the New York gateway.

Mr. Carpenter: What do you mean the New York gateway?

The Witness: Our interchange in the New York Harbor area with the Pennsylvania, Jersey Central and Lehigh Valley, or in the operation of our local TOFC service between New York, on the one hand, and various New England points, local line, on the other.

By Mr. Keenan:

Q. Now, Mr. Orner, with the facts in mind that you have just given concerning car supply, clearance, etc., please describe in general what, if any, disabilities remained to the New Haven Railroad in supplying customers with [fol. 1361] Plan III service TOFC service—what, if any, limitations do we have, as a practical matter?

A. Insofar as Plan III TOFC service is concerned, and at the moment I assume that I would restrict that to Chicago and St. Louis.

Q. Yes, please do.

A. Insofar as Chicago is concerned, as I have indicated we are now able to handle a high cube trailer on a standard type of flatcar via the Maybrook gateway.

It is also my understanding that we are now permitted under tariff to handle the two trailers necessary to a Plan III TOFC consignment on two separate flatcars, so that we can do that now between Boston and Chicago, or between Boston and St. Louis so long as those trailers can be handled on our 40-foot cars.

Now, one growing feature in the TOFC business, of course, is the 40-foot trailer, which can't be loaded on a 40-foot car. We can handle a 40-foot trailer on a Clejan type car, but as I have explained earlier, the only inter-line business which we can handle with the Clejan car is with one connection which does serve Chicago, but does not serve St. Louis.

Exam. Kane: You are talking about the Plan III service, now?

The Witness: This is the Plan III, TOFC.

By Mr. Keenan:

Q. Now, tell me again—I don't know whether you have done this before—what is the total size of the Plan III [fol. 1362] flatcar fleet right now?

A. We do not have a separate flatcar fleet for Plan III.

Q. The total size of the TOFC fleet, I am sorry.

A. The fleet consists of 353 forty-foot cars, and the number of Clejan cars which we will have, according to my understanding, is now or will be very shortly about 175.

[fol. 1363] Q. In 6992 when you testified, what did you say about the empty box car capacity moving from New Haven Railroad points to Chicago and St. Louis, and points beyond?

[fol. 1364] A. I explained the figure, the approximate figure of the availability of such cars, using as I remember the first six months of 1958, or a six month period in 1958, and adjusting that to account for cars of other ownerships and cars moving through other gateways, and through that determined an estimated figure of the daily availability of such cars.

Q. And what was it, approximately? You can express it in tons of empty box car capacity, or number of cars, whichever you want, for my purposes.

A. I am afraid I don't have that in front of me.

Q. If it would serve to refresh your recollection, I would be glad to supply you with a copy of the Commission's report in I&S 6992 where they made findings based on your testimony.

A. I think that would be helpful.

This document indicates that our check showed 194 such cars daily with a capacity of 9,720 tons.

Q. Now, have you brought this information up to date, Mr. Orner?

A. Yes, I have.

Q. How many empty box cars has the New Haven delivered to its connections during a representative period, a recent period?

A. I used the month of July, 1959, which at the time I made the check was the most recent month, and is still. I think, the most recent representative month in view of the [fol. 1365] steel strike. That month showed an average daily delivery of 560 empty box cars.

Q. From what records did you obtain this?

A. This is obtained from a monthly statement prepared by our auditor of car service accounts numbered SCS-56.

Q. Have you got it with you?

A. Yes, sir, I have.

Q. Have you records of empty box car forwardings to our connections for months other than July 1959?

A. Yes, I have the record back as far as March 1958 for each month since then.

Q. Now, of these 560 empties, empty box cars delivered to connections by New Haven Railroad, what analysis do you make to determine empty capacity to Chicago, St. Louis, and beyond?

A. I have done that in this way.

First, I have eliminated the empty box cars delivered to our northern connections, the Boston & Maine and the Central Vermont, and those delivered to short lines and Brooklyn terminals.

I have then made an estimate of the southern ownerships based on a spot check and eliminated them, and then I have made a further computation to separate the eastern and western ownership of cars, and this is based on a semi-monthly statement in the terminal report of the Association [fol. 1366] of American Railroads, which shows the ownership of box cars on our line, and indicates that recently we have been running a ratio of about sixty percent eastern to forty percent western ownerships.

I think this is a very conservative approach, because this limits the final figure to strictly western ownerships and excludes all western ownerships, and of course some so-called eastern roads actually serve Chicago and St. Louis, so the cars are at home at those points, and might actually move there.

The final net figure which I estimate for the month of July was 373 per day—I am sorry, 149.

Q. Have you got this Report CS-10 with you?

A. Yes, sir, I have.

Q. Have you reviewed it personally?

A. Yes, sir.

Q. What is the average capacity of this 149 cars daily which you say the New Haven forwards from points on its line to Chicago, St. Louis and points beyond?

A. 150 tons is a reasonable estimate.

Q. What is the average daily empty carrying capacity thus moving from New Haven?

A. That would be 7,450.

Q. On the basis of this, what is the annual empty carrying capacity of box cars which is moving from New Haven [fol. 1367] Railroad points to Chicago, St. Louis and beyond?

A. That appears to be only three million.

Q. Now, is the New Haven Railroad ratio of empty box cars received to empty box cars forwarded in accord with the conclusion you just reached?

A. Yes, it is.

Q. What is that ratio?

A. About 75 percent.

Q. Which is 75 percent?

A. The outbound empties delivered to connections is about seventy percent of the total.

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[fol. 1369] Cross examination.

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[fol. 1382] Q. Can you tell me, please, sir, why the big change from daily availability of 194 box cars westbound to Chicago and East St. Louis as found by the Commission in I&S 6992, and this figure of 560 you gave us as representing the situation in July of 1959?

A. The change in the month to month flow of cars reflecting to some extent the poor business conditions in the month of July.

Q. And the steel strike was on then, too?

A. The steel strike started at that time.

Q. That wouldn't necessarily be a typical situation for the New Haven?

A. No, there is a substantial month to month fluctuation and year to year fluctuation. The figures still seem so [fol. 1383] far in excess of any anticipated need that I didn't pursue it any farther.

Q. The fact remains that you do have empty availability—

A. We have substantial regular empty availability.

Q. Of those 560 cars, as I understood it, 149 are delivered to your connections westbound, is that right?

A. No, the 149 per day is my estimate of cars of western ownership—that is in the classification used by the AAR in the equipment register.

Now, under the delivery of box cars, the present arrangements under the car service rules for delivery of box cars, you see we are directed to deliver each ownership to a specific connecting railroad, and these instructions do not provide for our delivering any western ownerships to the Boston & Maine or the Central Vermont.

Q. That is what I said, Mr. Orner. 149 of them are delivered to your connections west?

A. Yes.

Q. And that 149 of the 560—is that right?

A. No, there are far more than 149 a day delivered to our western connections. The 149 was strictly western ownerships, and it is true they are also—those 149—included in the total delivered to western connections.

Q. How many of the 560 would be delivered to western connections?

[fol. 1384] A. 560 minus 138—422.

Q. Would all be going to the western connections?

A. Yes.

Q. What points would they be delivered—Maybrook would be one?

A. Maybrook; Jersey City, New Jersey; Fort Norris, New York; and we have several interchanges with the New York Central—Beacon, Campbell Hall, New York; Springfield, Worcester, and Fitchburg, Massachusetts.

Q. Now, you stated that your company was—the New Haven—was not an ownership company in the trailer train situation.

A. That is right.

Q. Does that mean that you can't lease cars from the trailer train company?

A. My understanding is this, that in times of car surplus—that is, a surplus of TTX cars which have been few and far between but have occasionally occurred—I believe TTX has leased cars to non-owners, but under normal practice it is my understanding that we cannot, as a non-owner, directly lease a car from TTX.

Q. Now, do you know whether you have leased any from them?

A. We have not.

Q. You have not?

A. No.

Q. The New Haven has the greatest fleet of flat cars in its [fol. 1385] ownership—that is trailer on flat cars under its own ownership in the east at the present time, has it not?

A. I would assume so, yes. I haven't actually checked the figure, but I think particularly with the growth of TTX, and knowing its general membership, I believe we would have the largest fleet.

Q. Now, what is the length of these forty foot flat cars you were telling us about, just forty feet?

A. Almost exactly, yes. It may be a fraction of an inch one way or another.

Q. You said you couldn't put a forty foot trailer on them?

A. That is right.

Q. Why not?

A. You do not have a sufficient margin. When the cars are coupled, and they are all loaded, you don't have a sufficient margin between the trailers, as I understand it, to load them.

Q. You say as you understand it.

A. That is what I am so advised by our mechanical department.

Q. You haven't seen them try it?

A. No, I haven't. I would be obviously very hopeful that we might be able to do it.

Q. What is this connection you say that is equipped to handle your Clejan car?

[fol. 1386] A. The Erie.

Q. You handle a good bit of traffic to Chicago in connection with that route, do you not?

A. Yes, sir.

Q. Are you using the Clejan cars in a Plan 3 operation to Chicago?

A. We have some, yes.

Q. Now, those Clejan cars are big enough to accommodate two forty-foot trailers, are they not?

A. No, the ones which we have are 79, about 79 feet long.

Q. So you would handle one forty foot trailer and one 35?

A. One 40 and one 35 would be the best that could be handled on those cars.

I think I explained in my earlier testimony that the forty-foot is gradually coming into the picture here in the east. It is still a relatively small part of the picture, but it is growing so that we are naturally thinking about it.

Q. Do you know what has occurred with respect to your Plan 3 trailer on flat car service—has that increased in volume since you testified in I&S 6992?

A. Yes. I have the figures here.

Do you possibly wish to supply a date of that testimony? Do you recall what it was? I have the figures here month by month which I can give you at whatever point you start.

Q. Well, I can't remember what month it would be, to be [fol. 1387] perfectly truthful.

A. My recollection was—

Q. Let's start—

A. I would say it was about a year ago.

Q. Let's start with January 1, 1959, and tell me the total number of trailers transported—is that the way you have it?

A. Yes.

Q. All right, sir.

A. This is both east and west, you want?

Q. Yes.

A. January 1959—

Q. Do you have it broken down, east and west?

A. Yes.

Q. Give it to me each way.

A. I will give you east, west, and total.

January, 28, 62 and 90.

February, 46, 62, 108.

March, 54, 92, 146.

April, 30, 74, 104.

May, 40, 48, 88.

June, 30, 42, 72.

July, 23, 65, 88.

August, 12, 94, 106.

I am sorry, I don't have the September figure.

[fol. 1388] Q. When you say east and west on that, would that be traffic that moved—

A. Eastbound to our line, or westbound.

Q. Interline traffic?

A. Oh, yes, Plan 3 is entirely interline.

Q. Chicago or East St. Louis on the west, as far as your line is concerned?

A. Yes.

Q. You show there the figures for July of 1958?

A. No, we didn't have it in effect at that time.

Q. When did they take effect?

A. September, 1958.

Q. Would you give me that, please?

A. 2, 24 and 26.

October, 46, 62, 106.

November, 76, 80, 156.

December, 40, 56, 96.

Exam. Kane: I am a little confused on the reference to the third figure in some of these months. What do you mean by that?

The Witness: It should be the total figure of the first two.

Exam. Kane: Oh, I see.

The Witness: East, west and total. The first figure is east, the second west, and the third is the total.

[fol. 1389]

By Mr. Carpenter:

Q. You told us changes had been made in clearances—what do you mean by that? Did you lower your road bed?

A. It was a combination of several things. One was that of actually undercutting bridges. In other cases we had to make some adjustments in our signals, or in our overhead attachment. We have overhead electrification west of New Haven, and this Maybrook route moves along that New York route for about twelve miles west of New Haven and then branches off away from the electrified area, so we had to make some changes in that area.

Q. So far as clearances are concerned, you encountered no difficulty now on traffic from the Boston and New Haven areas to Chicago and East St. Louis by the Maybrook route?

A. The only difficulty insofar as strictly clearance is concerned is there are a very few railroad owned flat cars higher than three feet eight, and we still cannot use them.

Q. You say there are a few of those?

A. There are a few.

Q. Very few.

A. Very very few, and they do move occasionally on our line and we have to be careful not to load a high cube trailer on one of those cars.

Q. These high cube trailers are all forty feet in length?

A. Not necessarily, no.

[fol. 1390] Q. The high cube trailer, the great majority of them now are what, 38?

A. 35, I believe. As I understand, the term "high cube" I think was first used, and you perhaps are better qualified than I am on this to describe the 35 foot—12 foot six trailer.

[fol. 1391] Exam. Kane: Let me ask you one question, Mr. Orner.

The New Haven Railroad—is that considered an originating or terminating carrier?

The Witness: Primarily a terminating carrier.

Exam. Kane: And on the 560 empties that you referred to, am I to understand that that is the total per day empties that are returned to connections?

The Witness: Yes.

Exam. Kane: Some of which are westbound and some may be eastbound?

The Witness: Yes. You see, that includes in the total cars which we deliver to the Boston and Maine, which would be primarily Boston & Maine, Maine Central, Bangor and Aroostock and Canadian Pacific, and then cars which we deliver to Central Vermont, which would be primarily Central Vermont or Canadian National ownerships. Then there are a few deliveries in there to our short lines, Union Freight subsidiary, Boston.

Exam. Kane: These empties that are returned to owners in westbound service, do you hold them at any time for the [fol. 1392] purpose of loading them back rather than returning them empty?

The Witness: No, we don't for this reason, that we have this continued daily, virtually constant surplus of equipment, so insofar as the plain box car is concerned, we have no occasion, no necessity to hold them.

If you refer to a DF car of specialized equipment or something of that sort, there might be instances there where we would hold it to meet a particular load, with the concurrence of the owner.

Exam. Kane: Very well.

[fol. 1395]

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

Transcript of Hearing—Thursday, October 29, 1959

Hearing Room "F",
Interstate Commerce Commission,
Washington, D. C.

Met, pursuant to adjournment, at 9:30 a.m.

Before: William J. Kane, Examiner.

Appearances:

(As heretofore noted.)

[fol. 1398]

Proceedings

Exam. Kane: Come to order, gentlemen.

Mr. Keenan: Mr. Coyle.

HOLLIS H. COYLE was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name, address and employment.

A. My name is Hollis H. Coyle. My business address, 54 Meadow Street, New Haven, Connecticut. I am Assistant Comptroller of the New York, New Haven and Hartford Railroad in charge of cost analysis work.

Q. Please state what your experience has been, Mr. Coyle, in your work in cost analysis?

A. I have been with the New Haven Railroad for 36 years, first the mechanical department, then the operating department, the research department and the accounting department, and during that entire period my work has consisted of analysis of operating and financial factors affecting the transportation service of the New Haven Railroad, including operating and capital budgeting and checking performance under it, analysis of the effects of changes in economic conditions on the service of the railroad, the effect of changes in rates, and fares on traffic, and on income.

During the reorganization, I had detailed supervision of [fol. 1399] practically all of the cost studies in connection with the reorganization proceedings.

Q. Mr. Coyle, have you acted as an expert cost witness in behalf of railroads in proceedings before the Interstate Commerce Commission before?

A. Yes, sir.

Q. What are some of these proceedings—was one of them the passenger deficit investigation?

A. Yes, sir.

Q. Was another the per diem case?

A. Yes.

Q. Are you familiar with Exhibit 2 in this proceeding, the tariff setting forth the Section 2 box car rates?

A. Insofar as it relates to the rates and conditions of service of the tariff.

Q. Have you familiarized yourself concerning the type of service covered by these rates, and to the extent Mr. Hartmann and Mr. Orner had discussed them, the type of operating conditions that characterize operations under these rates?

A. Yes, sir.

Q. Have you made a study of the costs that would be incurred from representative, or rather between representative New England points, on the one hand, at Chicago and St. Louis, on the other, by operations contemplated by these rates?

[fol. 1400] A. Yes, sir.

Q. Have you tabulated the results of this study in the form of exhibits?

A. Yes, sir.

Mr. Keenan: I ask, Mr. Examiner, that a two-page document entitled "Statement showing the fully distributed cost taken from I.C.C. Statement 5-58" be marked for identification.

Exam. Kane: It will be marked for identification as Exhibit No. 31.

(Respondent's Exhibit No. 31, Witness Coyle, was marked for identification.)

By Mr. Keenan:

Q. Mr. Coyle, is Exhibit 31 the tabulation of the results of your cost study that you just referred to?

A. Yes, sir.

Mr. Keenan: I ask that a two-page document entitled "Percent revenue of costs on Chicago rates", the second page being per cent of revenue of costs on St. Louis rates, be marked for identification.

Exam. Kane: It will be marked Exhibit 32 for identification.

(Respondent's Exhibit No. 32, Witness Coyle, was marked for identification.)

By Mr. Keenan:

Q. Mr. Coyle, did you make a comparison of the costs which you found with the revenues which would be produced by the rates under investigation?

A. Yes, the results of that are shown on the two sheets [fol. 1401] of Exhibit 31 for identification.

Q. Could you restate that comparison in terms of ratios?

A. In terms of percentages which are shown on Exhibit 32.

Q. Now, Mr. Coyle, will you tell me what you did to develop the costs on Exhibit 31?

A. I considered the type of operation which was contemplated in the tariff with respect to Section 2 rates and concluded that the service involved represented that between terminals which represented a cross section of the

type of railroad terminals encountered in the Eastern District of the United States, and also that the traffic covered by this tariff was westbound in nature, that the conservative measure of the relationship between costs and rates would be reflected by the fully distributed costs for various distances and various weights for box car traffic as shown in Table 1 of Statement 5-58, after adjustment of the data shown in Statement 1 for the difference in 28300 mileages between the various terminals shown on Exhibit 31.

Q. When you referred to Statement 5-58, did you refer to a statement entitled "Rail carload cost scales by territories for the year 1957", issued by the Bureau of Accounts, Cost Finding and Valuation of the I.C.C. in November, 1958?

A. Yes.

Q. Will you proceed, or had you concluded?

A. I think that is a brief description of the underlying [fol. 1402] reasons behind my decision to use the data shown on Exhibit 31.

Q. And you relied on territorial cost scales, is that right?

A. Yes. Territorial cost scales for box car traffic in the Eastern District.

Q. What railroad operations are the basis for the cost computations made in the territorial cost scales?

A. The railroads in the Eastern District of the United States, of which the terminals involved in this Section 2 tariff are a substantial part, and the routes over which this traffic will move are a very substantial portion of the main routes which produce the traffic, the results of the operation of which are represented by the rate scale or the cost scale in Statement 5-58 for the Eastern District.

Q. Now, are your cost conclusions, as reflected on Exhibit 31, valid for the operations of only a particular railroad between the points involved?

A. No, they are representative of all of the railroads performing a service between these terminals.

Q. Specifically, are they representative of operations via the New Haven Railroad, the B&M Railroad and the New York Central Railroad?

A. Yes, sir.

[fol. 1404] Cross examination.

By Mr. Carpenter:

[fol. 1405] Q. Now, Statement 5-59—strike that, please.

You have told us, and I want to be sure, that what you did was to utilize the rail carload cost scales set forth in Table 1 of Statement 5-58 of the Cost Finding Section?

A. That is correct, and interpolated for differences in mileage.

Q. In the fashion that the statement sets out?

A. That is correct.

Q. Now, those cost scales cover railroad operating costs [fol. 1406] during what year?

A. 1957.

Q. Will you agree with me the costs have increased, railroad operating costs have increased since 1957?

A. Yes, if Statement 5-59 had been brought up to present conditions, all of the figures would have been approximately five per cent higher.

Q. Did you make any adjustment in your costs as computed on your Exhibit 31 to reflect present-day operating cost?

A. No, sir.

Q. These are the 1957 costs?

A. That is correct.

[fol. 1408] Redirect examination.

By Mr. Keenan:

Q. Do your costs include any element—do your costs on Exhibits 31 include any element of loss and damage expense?

A. No, they don't. Since the basic table I used, Table 1, did not, these figures do not.

[fol. 1409] By Mr. Keenan:

Q. Will you read, please, the short last paragraph on Statement 5-58, page 1?

A. "The costs shown here exclude the loss and damage claim payments. If costs are desired including such payments, they may be computed by adding an allowance for the loss and damage claim payments of the applicable commodity group (See Appendix A) to the costs shown in the tables."

Q. Mr. Coyle, have you an opinion as to the degree in which your cost figures on Exhibit 31 and your ratios on [fol. 1410] Exhibit 32 would change if you were to make allowance for a loss and damage expense of 8.7 cents per hundredweight?

A. Well, I haven't done that particularly. I have included in my thinking the sum of the two effects which are not reflected in Table 1, that is loss and damage, and the difference in cost levels now as compared with 1957, and I have concluded that the amount which would be added would be just about equal to the amount which is already included in the fully distributed cost covering the passenger deficit and the l.c.l. deficit, which, of course, are not actually costs of performing this service.

Q. Tell me whether in your opinion if you were to adjust your costs for increases in wage and consumer price levels, and for damage expense of the order I have just talked about, tell me whether the revenues under the subject rates would exceed fully distributed costs?

A. In my opinion, they would.

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[fol. 1411] OFFERS IN EVIDENCE.

Exam. Kane: Exhibits 31 and 32 are received in evidence.

(Respondent's Exhibit Nos. 31 and 32, Witness Coyle, were received in evidence.)

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GILBERT J. PARR was sworn and testified as follows:

Direct examination.

By Mr. Carpenter:

Q. Please state your name and address for the record, please, Mr. Parr.

A. Gilbert J. Parr, transportation consultant, 505 Perpetual Building, Washington, D. C.

Q. Will you outline briefly your background and experience in the field of transportation?

A. I have had more than 39 years in the transportation field. From 1920 to 1939, I was employed by the Missouri Pacific Railroad in its operating department and in its special operating business.

During that time I was accountant, timekeeper and special operating accounting in charge of the Cost Finding Section of the Missouri Pacific.

In 1939, I was appointed as the chief of the Cost Section [fol. 1412] of the Missouri Pacific.

In 1939, I was appointed as the chief of the Cost Section of the newly formed Cost Finding Section of the Interstate Commerce Commission. I left the services of the I.C.C. in 1950, and went with the Waterman Steamship Corporation as director of economic research and cost.

I resigned from the Waterman Steamship Corporation in 1952, and entered the private consulting field. I have been in that field since that time.

Q. You have testified before the Interstate Commerce Commission with respect to railroad and motor carrier costs in other proceedings?

A. Yes, sir.

Q. Many times?

A. Yes, sir.

Q. Have you prepared, Mr. Parr, an exhibit comparing the rail rates here under investigation with the costs for the movement of the traffic?

A. I have.

Mr. Carpenter: If the Examiner please, may this document, consisting of some eight pages, and having a blue

cover, be marked for identification with the next number?
Exam. Kane: It will be marked for identification as Exhibit No. 33.

(Respondent's Exhibit No. 33, Witness Parr, was marked for identification.)

[fol. 1413] By Mr. Carpenter:

Q. Mr. Parr, page 1 of the exhibit which follows immediately after the flyleaf showing the table of contents, purports to be a comparison of all commodity rates with out-of-pocket and fully distributed costs for the movements, and it is headed Table 1, is that correct?

A. Yes, sir, that is Table 1, sheet 1 is to Chicago, and sheet 2 is movements to East St. Louis.

Q. Both headed Table 1?

A. Yes.

Q. Now, upon what sort of movement are those costs based?

A. The cost in Table 1, on both sheets 1 and 2, are based on the movements of the traffic in a single box car.

Q. Table 2 commencing on page 3 appears to follow the same format, is that right?

A. Yes, sir.

Q. And upon what sort of movement are those costs based?

A. They are based on the movement of the traffic in two box cars.

Q. Why was Table 2 prepared?

A. Table 2 was prepared for the reason that I was informed by the traffic officials of the Eastern Central Motor Carriers Association that the tariff provided for the movement of the traffic in two cars, and I was requested thus to show the cost based on the movement in two cars as well as the one car.

Q. Turning now to Table 1, will you explain its format [fol. 1414] and what it shows, please, sir?

A. Table 1 shows a comparison of the rates with both out-of-pocket and fully distributed cost.

In columns 6 and 7, the ratios of the rates to the cost are shown, that is a ready convenient way of measuring the

amounts by which the rates exceed or fail to exceed the cost. For example, in column 7, it will be noted on the first line that there is a figure of 113. That means that the rate exceeds the fully distributed cost by 13 percentage points. Now, going down that column it will be noted that in most instances the rates cover the fully distributed costs to Chicago. There are some instances where it just equals or meets only by a very small amount.

Referring to sheet 2 of the same table, in column 7, it will be noted that to the movements to East St. Louis that the rates failed to meet the fully distributed cost in, I would say, the majority of the instances.

Q. Table 2 was prepared in the same format, was it not?

A. Yes, sir.

Q. Can you refer now to Table 3, commencing on page 5 of this exhibit, and explain that for us, please, sir?

A. Well, if I may, I would like to just briefly comment on Table 2.

Q. All right, sir.

A. Table 2, as I have explained, is based on the movement [fol. 1415] in two cars. It will be noted from column 7—that is sheets 3 and 4 of my exhibit—that the rates fail to meet the fully distributed cost by very substantial amounts. In fact, they failed—the rates failed to meet the out-of-pocket cost, and as will be noted in column 6 where the ratios range from around 70 to 92 or 93 per cent.

Table 3 shows the development of the unit cost applicable to the movement of box car traffic. This merely takes the Cost Finding Section's various schedules and places them in a convenient form so that there is shown a separation of the terminal and line haul, loss and damage claim payments, and the cost separately for out-of-pocket and fully distributed.

As will be noted by reference to the footnote 1 on sheet 6 of the table, the source of the material is scheduling and summary 1 of the Cost Finding Section's statement 5-58. However, I should explain that the statement 5-58 cost, as Mr. Coyle has previously pointed out, covers the cost for the year 1957.

I have adjusted those costs to June 1, 1959 on the same basis as is used and is suggested by the Cost Finding Section of the I.C.C.

I should also explain that the different levels in the cost increases the cost by about six per cent. I think Mr. Coyle mentioned a figure of five per cent. I have computed the differences, and I think it runs about six per cent, but [fol. 1416] it can be very easily computed by comparing Mr. Coyle's figures and my figures, and, in addition, I have included the loss and damage claim payments of 8.7 cents, whereas Mr. Coyle did not include such expense.

Exam. Kane: I believe Mr. Coyle indicated that the loss and damage would add approximately five per cent, as I recall, to his figures.

The Witness: As I understood it, it is 8.7 cents.

By Mr. Carpenter:

Q. What was the five per cent?

A. The five per cent, as I understand it, was the change to bring it up to date. There were two adjustments that Mr. Coyle discussed. He said, as I understand it, that if you brought the 1957 cost up to present-day level, it would increase the cost by about five percentage points, and then the other adjustment, Mr. Examiner, he said that according to the statement 5-58, the loss and damage figure was 8.7 cents, and I don't recall that he mentioned any percentage change in the costs for that figure.

Exam. Kane: My notes show here that with reference to Mr. Coyle's exhibit, he indicated that you add approximately five per cent for each of the figures for the year 1958. That is what I understood him to say.

The Witness: Yes, sir, that is to bring it up to present day.

Exam. Kane: Would your figures reflect the adjustment [fol. 1417] to June?

The Witness: To June 1, 1959, yes, sir.

By Mr. Carpenter:

Q. Mr. Parr, in your Exhibit 33, page 7 and 8, there is an explanatory statement?

A. Yes, sir.

Q. And that is as complete as you can make it?

A. Well, not as complete as I can make it—as brief as I can make it.

Q. You have commented with respect to Table 1 regarding the extent to which the proposed rates recover fully distributed cost, and you made comment with respect to Table 2 as to their failure to recover fully distributed costs.

Can you tell us, please, sir, just what the significance is of fully distributed cost?

A. The fully distributed cost, as explained on page 8 of my Exhibit 33, covers the operating expenses, rents and taxes, plus allowance for return based on four per cent, and passenger and l.c.l. deficit.

Now, in the distribution of the constant costs, that is the difference between the out-of-pocket costs and the so-called fully distributed cost, a statistical apportionment of the constant cost is made to the very traffic. In other words, this means that any one ton or any one ton mile receives the same amount of the constant cost as any other ton or ton mile. This disregards altogether value of service and [fol. 1418] other non-cost factors, and it was purposely prepared in that fashion so that there would be shown a figure which reflected a norm. In other words, it would reflect, on the average, what each ton of traffic would have to pay in order to make the carrier whole on its total outlays.

Q. Now, Mr. Parr, in order that the record will be entirely clear, the out-of-pocket costs, as shown by page 7 of your Exhibit 33, cover only 80 percent of the total operating expenses, rents and taxes, plus the four per cent return, or one hundred per cent of the depreciated investment and fifty per cent—the depreciated investment in equipment and fifty per cent the depreciated investment in roadbed, is that right?

A. Yes, sir.

Q. So that you would have the 20 per cent that would not be there included to distribute as a part of the so-called burden, is that right?

A. Yes, sir.

Q. Now, in addition to that 20 per cent, you would have, also, the passenger deficit and the l.c.l. deficit?

A. Yes, sir, plus the remaining four per cent on the fifty per cent of the investment in the road, depreciated investment in the road.

Q. And that is what is distributed over the great body of traffic by adding to the computed out-of-pocket costs an apportionment of that so-called burden, is that correct? [fol. 1419] A. Yes, sir.

Q. Now, on what basis is that distribution made?

A. As I explained, it is a statistical basis and it reflects the same distribution to each ton of traffic as to any other ton.

Q. It is done on a ton and on a ton-mile basis?

A. Yes, sir.

Q. Now, the tons is on the—

A. On the terminal portion.

Q. And the ton-mile on the line-haul portion, is that right?

A. Yes, sir.

Q. Have you prepared another exhibit to show how the various categories of traffic now contribute to this so-called burden?

A. Yes, I have.

Mr. Carpenter: If the Examiner please, may this one-page exhibit entitled "Revenue bearing characteristics of traffic handled in Official Territory" be marked with the next number?

Exam. Kane: It will be marked for identification as Exhibit No. 34.

(Protestant's Exhibit No. 34, Witness Parr, was marked for identification.)

By Mr. Carpenter:

Q. Referring to the exhibit identified as No. 34, will you please explain what that exhibit purports to show?

A. Exhibit 34 shows information in the upper block—[fol. 1420] that is for lines 1 to 8—for data covering Official Territory—that is for all movements of traffic in 1957 in Official Territory.

The last block headed "New Haven Railroad," that is lines 9 to 14, shows similar information for the New Haven Railroad for the year 1958.

This exhibit shows, among other things, the distribution or the way in which the traffic handled—dealing now with the Official Territory figures—separates itself into the broad category of traffic, and by broad categories, I mean products of agriculture, and animals and products, products of mines, products of forests, manufactures and miscellaneous, and forwarder traffic.

This exhibit shows the tons terminated, the revenue, and the contribution, and it shows the percentage in each of those categories.

For example, it will be noted that, using line 6, the percent of the tons terminated in the Official Territory, 68 per cent, a little more than 68 per cent is in the products of mines group, whereas 45 per cent is in the manufactures and miscellaneous, 5.3 per cent is in the products of agriculture group, and the balance of it is less than one per cent, that is in the other categories.

This also shows the amounts of revenues received in those various categories of traffic, by comparing the per-[fol. 1421] centage of the tons with the percent of revenues some idea is obtained to the nature of the rates or the nature of the revenues received for the traffic.

For example, for manufactures and miscellaneous, it will be noted that 25 per cent of the tons was in that group. 43.2 per cent of the total revenues received by the carriers in Official Territory in that group.

Now, the last line, line 8 in that block, shows the contribution—in other words, the difference between the out-of-pocket cost for the handling of the traffic in those various groups with the total revenues received, and again referring to manufactures and miscellaneous, it will be noted that for the Official Territory Railroads that almost 64 per cent of their contribution came from manufactures and miscellaneous, indicating the vital necessity of obtaining from that group more than almost two-thirds of the contribution which the carrier needs to provide for the payment of all of its operating expenses, rents and taxes, plus the passenger and l.c.l. deficits.

Referring to the next block, that is lines 9 to 14, similar information is shown. Before commenting on that, I should mention that in the first block, on lines 4 and 5, there are

ratios shown in line 4, the ratio of the revenue to the out-of-pocket cost, and the ratios of the revenues to the fully distributed cost.

[fol. 1422] Now, referring to line 4, in column 6, it will be noted that the manufactures and miscellaneous has a ratio of 163. That means that the manufactures and miscellaneous commodities, or the commodities included in that group, produced amounts in excess of the out-of-pocket cost by 63 percentage points. Of course, by looking at the other columns, it will be noted that exceeds in most instances by five or six times that for other commodities.

In line 5, again referring to manufactures and miscellaneous, it will be noted that the manufactures and miscellaneous group contributed 29 per cent above fully distributed cost on the average. That is denoted by the figure 129, which is the ratio.

Again, by referring to the other columns, it will be noted in only one instance did the other commodities, or the commodities in the other group, produce amounts equal to the fully distributed cost. The single exception was freight forwarder, where that amount was only one or two, or two per cent above the fully distributed cost.

Q. May I interrupt there and ask a question?

The column on the extreme right of your Exhibit 34, with reference to lines 4 and 5 again, you show a figure of 135 per cent that all commodities contributed in the way of revenue over and above out-of-pocket cost. Is that correct?

A. Yes, sir.

[fol. 1423] Q. And on line 5, you show that they failed to contribute fully distributed costs—actually they contributed only 98 per cent.

By all commodities, did you mean all traffic there?

A. All traffic that is handled by the railroad.

Q. And that is in Official Territory for the year—

A. 1957, yes, sir.

Q. And I take it, then, that the railroads in Official Territory failed to recover their fully distributed costs during the year 1957 by two percentage points?

A. Yes, sir, their fully distributed cost would have been \$2,943.5 million. That can be obtained by dividing the

revenues of 2,884.6 million shown in line 2 by .98, or ratioing it up to one hundred per cent.

Q. All right, sir.

Now, with respect to the New Haven, if you please.

A. The data for the New Haven Railroad is shown in lines 9 and 14 of my exhibit. Again referring to column 6, it will be noted that the dependence of the New Haven Railroad on the revenues and contribution from the manufactured and miscellaneous is very important to that carrier. In fact, much more important than to the railroads in Official Territory.

This is shown by the percent of contribution in line 14, column 6. This is a figure of 83.6 per cent. In other words, [fol. 1424] that shows that the New Haven Railroad must obtain from manufactures and miscellaneous 84 per cent of the money they require to pay all operating expenses, rents and taxes, and provide allowance for return.

It will be noted from the other columns that that figure of 84 per cent is 80 times the amount shown for some of the other commodity groups, and is 18 times that shown for products of agriculture, the next largest commodity group that yields revenues or makes contribution to the carrier's overhead burden.

It will also be noted from lines 12, 13 and 14, again referring to column 6, that while the per cent of tons carried in that group was 55.4, as shown in line 12, the per cent of revenues was 64.8, again denoting the higher level of rates charged on that commodity, and then the contribution itself rising to 83.6 per cent.

This demonstrates the very urgent need for the New Haven Railroad to obtain from its manufactures and miscellaneous group the large block or large share of the excess above out-of-pocket costs to provide and pay for its bills.

Q. Mr. Parr, had you finished with Exhibit 34? There was one other question I wanted to ask about that.

Can you tell me how the New Haven has done with respect to recovering its fully distributed costs from all of its operation?

[fol. 1425] A. Well, unfortunately, the New Haven Railroad in the year 1958 suffered a very heavy loss. Their net

railway operating income wasn't income, it was a loss of \$3,855,547, and the net income after fixed charges amounted to \$4,276,639, so they failed—the revenues and the traffic which was handled by the New Haven in 1958 weren't sufficient by any means to cover the so-called, well, its total expenses or, stated differently, the fully distributed costs.

Q. Have you prepared another exhibit consisting of two pages, which compares the cost to a shipper using Plan III services, trailer-on-flatcar services, with the rates here under investigation?

A. Yes, sir.

Mr. Carpenter: May this two-page document be marked with the next number?

Exam. Kane: It will be marked Exhibit No. 35 for identification.

(Protestant's Exhibit No. 35, Witness Parr, was marked for identification.)

By Mr. Carpenter:

Q. Will you explain, please, sir, how the exhibit was prepared and what it purports to show?

A. In the first four lines on this exhibit, in column 2, there is shown the charge made to the shipper for the Plan III service in line 1 from Boston to Chicago, and in line 2 from Boston to East St. Louis.

[fol. 1426] In line 3, there is shown the trailer rental expense per shipment, and as I have explained in the footnote there, it is based on the rental of \$7.50 per day for two trailers used for four days.

Q. Where did you get those figures, please?

A. The figure of \$7.50 was shown by the DL&W Railroad in 32533 as being the cost or the charge to the shipper for the use of the trailer. That data was introduced by Mr. Barngrove of the DL&W, and I have the page reference if you would like it.

Q. No, that is all right, sir.

A. The four days are the same figures that Mr. Hartmann had used for the movement of the traffic between those points. Now, in line 4, under the sub-captions A to F, is shown the cost, the P&D cost.

Q. What is P&D cost?

A. Pickup and delivery cost per hundred pounds incurred at origin and destination, and I should make it clear that these P&D costs are not the total costs, but only the running costs. That is the running cost from the carrier's platforms to the shipper's dock, or from the shipper's dock to the ramps.

As will be noted on the second sheet, those figures were developed based on actual studies made by the Cost Finding Section in the Eastern Territory and in the Western Territory. Those statements are 3-58 and 3-57.

[fol. 1427] The figures in those two statements were increased as is shown in line 5 of the second page of this exhibit by ten per cent to bring the cost up from the 1956 level, which was shown for the Midwestern or the Central Region carriers, and the 1957 costs which were shown in Statement 3-58 for the New England Region carriers.

Referring to the lines 5 to 10, there is shown in column 2 the total cost to the shipper for the Plan III service. That, as I have explained, included the charge which the railroads make to the shipper for that service, plus a trailer rental, and the running cost only, the P&D running cost from the shipper's platform to the ramp.

By referring to column 2, it will be noted that in all but one instance, and that is for the 70,000 pound shipment shown on line 10, that the Plan III TOFC service costs the shipper more than the New Haven's proposed—we have proposed there, but New Haven's box car rates which are here under investigation.

For example, for a 20,000 pound shipment, it shows that it costs the shipper 71 cents a hundred pounds more for the Plan III TOFC service than for the service provided by the New Haven.

Similar, for the 30,000 pounds, it shows a difference of 36 cents a hundred pounds, and for the 40,000 pounds it shows a difference of 25 cents, and for the 50,000 it shows [fol. 1428] 8.8, or almost nine cents, for the 60,000 it shows less than a half a cent, four-tenths of a cent, and as you have explained for the 70,000 pound shipment, the New Haven's proposed box car rates cost the shipper 7.8 cents more than the Plan III.

Similar information is shown for the movements from Boston to East St. Louis in lines 11 to 16. In those instances, it will be noted that there is even wider differences shown for the Plan III versus the New Haven box car rates.

For the 20,000-pound shipment, for example, it amounts to about 97 cents a hundred pounds, and so on.

Exam. Kane: Do you mean by that, then, it would cost more to the shipper via the Plan III service than by the rates under consideration?

The Witness: Yes, sir.

Cross examination.

By Mr. Keenan:

Q. Mr. Parr, your Exhibit 34. Tell me again what is the arithmetic by which you compute this percent of contribution on line 8 and on line 14?

A. The figure is computed by dividing the contribution shown in line 3—for example, using manufactures and miscellaneous of 468.2 million, by the 751.5 for all commodities. In other words, it reflects the percent of contribution is one hundred for all commodities. Then you take your [fol. 1429] contribution as shown in line 3 for each of the categories of traffic, and obtain its percentage relationship to that total.

Q. Now, how do you compute the figure in line 3, column 8, 751.5?

A. That is shown in the Cost Finding statement 2-59.

Q. Do you happen to have that with you?

A. Yes, sir.

Q. What page is it shown on? If you happen to have two copies, I would like to borrow one to refer to while you are talking.

Mr. Carpenter: I have one copy here, Mr. Parr. It may save you some time.

By Mr. Keenan:

Q. You told me you could find this figure in column 8, line 3, 751.5, somewhere in Statement 2-59. Is that to be found on page 63?

A. Yes, sir, page 63 under the caption "960 all commodities, Official to Official," the second line in that block, column 9.

Q. Statement 2-59 is, is it not, based on the one per cent waybill study, the Commission's waybill study for the year 1957?

A. Yes, sir.

Q. Now, how many carloads actually moved on the basis of which this ratio or this figure of 751.5 was developed?

A. 134,350.

Q. Carrying how many tons?

[fol. 1430] A. 6,520,450 tons.

Q. And the average load per car was—

A. 49 tons.

Q. The average haul per ton was?

A. 251.

Q. 251 miles?

A. Yes, sir.

Q. And your total revenue was, in dollars?

A. \$28,846,086.

Q. And your out-of-pocket cost?

A. \$21,330,743.

Q. Now, this is traffic moving solely within Official Territory, is that correct?

A. Yes, sir.

Q. And these are traffic figures which are given the commodity Account No. 960, is that correct?

A. Well, that is all commodities. 960 is the grand total.

Q. Now, on the same statement I want you to give me the same information, if you will be so good as to do so, concerning manufactures and miscellaneous, which is 940, and also concerning forwarder traffic which is 950.

A. For the manufactured and miscellaneous group, the data shown on page 62, there were in Statement 2-59 the following statistics.

48,808 cars. 1,633,313 tons. Average load per car, 23 [fol. 1431] tons.

Q. 33 tons?

A. Yes, sir. Average haul, 246 miles. Revenue, \$12,465,383. Out-of-pocket cost, \$7,663,268. Contribution, \$4,802,115.

Now, for the freight forwarder figures, that is shown on page 63, the carloads were 1,329. The tons, 12,037. The average tons per car is 9. The average haul per ton is 832. The revenues are \$393,007. The out-of-pocket costs are \$349,643, and the contribution is \$43,364.

Q. You have given me 940 and 950, forwarder traffic?

A. Yes, sir.

Q. Now, do you, or would you finally give me Account 799, manufactured and miscellaneous, NOS?

A. The data is shown on page 62 as follows:

1,552 carloads. 29,837 tons. 19 tons per car. Average haul, 481 miles. Revenues, \$319,816. Out-of-pocket cost, \$322,629. Contribution, a deficit, \$2,813—in other words, it doesn't meet the out-of-pocket cost.

Q. Now, you have made the statement, if I recall it correctly, Mr. Parr, that this contribution, or per cent of contribution, as you term it, represents revenues from the carriage of traffic which revenues are needed to pay all the operating expense, rents and taxes.

Did I get your proposition correctly?

A. Not quite, Mr. Keenan, because I mentioned the fact [fol. 1432] that they didn't cover—it missed by two percentage points of covering all of the expenses plus allowance for profit, but in principle, what you say is correct.

Of course, in the case of the New Haven, the revenue failed by a substantial amount to meet the fully distributed cost, as evidenced by the fact that there was a loss in net income.

Q. Yes, you have the figure 98 per cent for the railroads within Official Territory. Do you happen to know what the same figure would be for the New Haven for the year 1958?

A. Of course, that figure is not worked up, Mr. Coyle doesn't have it, neither have I, so I assumed, for the purpose of my illustration here, or for the purpose of this exhibit, that it would be the same, and, of course, if I had reflected the fact that the revenues failed to meet the out-of-pocket cost, or failed to meet the total cost by, I would say, 90 per

cent—it would be 90 per cent of it—these figures would have looked much worse, unfortunately.

Q. Now, what is the out-of-pocket cost to begin with that must be met by revenues in order to arrive at a percentage of contribution, or to produce a percentage of contribution?

A. Well, if I understand your question, the out-of-pocket costs are as I have stated, 80 per cent of the operating expenses, rents and taxes, plus a four per cent return on one hundred per cent of the depreciated investment in the equipment, plus a four per cent return on fifty per cent of the depreciated investment in the road.

[fol. 1433] Q. What operating expenses do you refer to, Mr. Parr?

A. That is the freight service operating expenses.

Q. Does it include expenses of the railroad?

A. No, sir—freight service.

Q. Total freight.

A. Total freight service. That would include MWS, MV, traffic, general, transportation.

Q. Well, here is the thing. I know you don't mean to suggest, do you, that manufactured and miscellaneous traffic should pick up, or the revenues from it should cover all of the freight operating expenses of the railroad? It is your proposition, isn't it, that it should cover at least the operating expenses of carrying manufactures and miscellaneous traffic, isn't that right?

A. I am sorry, may I have that, please?

(Question read.)

The Witness: My statement is that manufactures and miscellaneous for the New Haven Railroad must contribute 84 per cent, or approximately 84 per cent of the total contribution. In other words, that would cover more than just the out-of-pocket cost which is assignable to the manufactured and miscellaneous group.

By Mr. Keenan:

Q. To begin with, though, you say, do you not, that M&M traffic, as I assume you say all other traffic should recover the immediate cost of providing the service when [fol. 1434] the traffic moves?

A. Yes, sir, there is no question about that.

Q. The cost incurred by that traffic, right?

A. The out-of-pocket cost.

Q. Now, it is true that you compute your fully distributed cost on the basis of the amount of out-of-pocket cost incurred by a given segment of traffic, don't you?

A. No, sir.

Q. Don't you allocate—didn't you tell me—fully distributed cost on a statistical basis?

A. Yes, but we use a ton and ton mile, not an expense basis.

Q. You allocate fully distributed costs then on the number of service units used to provide this transportation service which is being costed out?

A. The tons and ton miles, yes, sir.

Q. Now, you have calculated, or have relied on a calculation, when you wrote up Exhibit 34, of the out-of-pocket expenses incurred by the New Haven Railroad during 1958 of carrying manufactures and miscellaneous traffic, haven't you, Mr. Parr?

A. May I have that question, please?

(Question read.)

The Witness: No, Mr. Keenan, I have, as will be noted from Exhibit 34 in line 11, I have computed the out-of-pocket cost for the New Haven because the figures were not [fol. 1435] available to me, I have computed that by using the same ratios as was shown for the Official Territory. In other words, I assumed that the ratio of revenues to out-of-pocket costs for the New Haven were no different than in Official Territory, and therefore I actually constructed the out-of-pocket cost on that basis, using the total expenses, actual known expenses for the New Haven Railroad for 1958.

[fol. 1442] Q. Do you happen to have Statement 4-54 with you?

A. Yes, sir.

Q. Mr. Parr, at pages 18 and 19, does 4-54 contain an explanation of the term "value of service"?

A. Yes, sir.

Q. Does that explanation, among other things, include these words—value of service means—it means in effect taking advantage of a condition of expansible traffic volume where the traffic will respond to rate reductions, the results being the encouragement of the maximum utilization of the carrier's plant and equipment, the distribution of the constant costs over a larger volume of tonnage and the attainment of a lower level of rates on all traffic, the high rated as well as the low rated, than could be realized if differences in rates were limited solely to differences in cost of service.

Is that statement contained in the cost bible?
[fol. 1443] A. Yes, sir.

Q. Are you in agreement with it?

A. Yes, sir.

Q. Is that value of service concept that the Commission's Cost Section is discussing in the paragraph you have just been talking about the same thing as the meaning of the term "value of service" as used on page 8, your Exhibit 33?

A. Yes, sir.

Q. You are familiar, are you not, with the term "differential charging"?

A. Yes, sir.

Q. Will you explain what it means?

A. Differential charging means the charging of more for one commodity than for another that have the same cost. In other words, there is a greater amount or greater rate charged on a particular commodity than is justified by the cost.

For example, if you had two commodities that cost one hundred dollars, say it was fully distributed cost, differential charging would come into play if you would charge, for example, \$125 for the handling of one commodity and the handling of a charge of one hundred dollars for the other commodity.

Mr. Keenan: I have no further questions.

[fol. 1446] OFFERS IN EVIDENCE

Mr. Carpenter: I tender in evidence Exhibits 33, 34 and 35.

Mr. Keenan: No objection.

Exam. Kane: Exhibit 33, 34 and 35 are received in evidence.

(Protestant's Exhibit Nos. 33 to 35, incl., Witness Parr, were received in evidence.)

[fol. 1447] . JOSEPH N. FRAZEE was sworn and testified as follows:

Direct examination.

By Mr. Carpenter:

Q. Mr. Frazee, will you please give your name and business address for the reporter?

A. My name is Joseph N. Frazee. I am employed by the Eastern Central Motor Carriers Association, Toledo, Ohio, 207 East Talmadge Avenue.

Q. In what capacity are you employed by the Eastern Central Motor Carriers Association, please, sir?

A. As rate analyst in the Commerce Department.

Q. And how long have you been there?

A. Five years.

Q. Prior to that, could you tell me how many years you have had of experience in transportation and particularly with reference to rates and tariffs?

A. Approximately six and a half years as a motor carrier.

Q. Before you went with the Association?

A. That is right.

Q. Are you familiar with the rates of New Haven which are under investigation in this proceeding?

A. I am.

Q. Have you prepared an exhibit to show what percent those proposed rates are of the rail Docket 28300 first class rates?

[fol. 1448] A. Yes, I have.

Q. And also to compare them with the existing all commodity rates of the New Haven, the so-called Section 1 rates?

A. Yes, I have.

Mr. Carpenter: If the Examiner please, may this document entitled Statement Showing the New York, New Haven and Hartford proposed all articles rates and their percent of the 28300 applicable first class rate, be marked for identification with the next exhibit number?

Exam. Kane: Exhibit 36 for identification.

(Protestant's Exhibit No. 36, Witness Frazee, was marked for identification.)

[fol. 1451] Mr. Carpenter: Exhibit 37 I would like to be a statement showing a comparison of the rail 28300 class rates from and to the points involved—it is an exhibit of three pages. That should be Exhibit 37.

Exam. Kane: Let the record so show.

(Protestant's Exhibit No. 37, Witness Frazee, was marked for identification.)

By Mr. Carpenter:

Q. Mr. Frazee, that exhibit identified as No. 37 shows [fol. 1452] the 28300 class rate scale from 100 down to 25, does it not?

A. Yes, sir.

Q. Between each pair of points as entered on the exhibit?

A. Yes, sir.

Q. And in the right hand portion of it, it reproduces the proposed Section 2 rates?

A. That is correct.

Q. Mr. Frazee, have you prepared another exhibit of representative Plan 2 rates of the New Haven Railroad between the points affected by the Section 2 or proposed rates, comparing those Plan 2 trailer on flat car rates with the Eastern Central Motor Carrier rates as well as the Section 2 rates?

A. I have.

Mr. Carpenter: May this next document, consisting of eight pages, entitled Statement Showing a Comparison of the present rail Plan 2 rates published in New England territory Railroads Tariff ICC No. N-4, be marked with the next number?

Exam. Kane: It will be marked as Exhibit No. 38 for identification.

(Protestant's Exhibit No. 38, Witness Frazee, was marked for identification.)

By Mr. Carpenter:

Q. Mr. Frazee, is the exhibit marked as No. 38 generally self-explanatory, or do you care to comment about it?

[fol. 1453] A. No, I would say so.

Q. You have used some symbols on that also, have you not, which are explained on page 8, the reference marks?

A. That is correct.

Q. The columns headed 6, 7 and 8 on your Exhibit 38, and I am looking at page 1, are headed Rail Plan 2.

By Plan 2, do you mean Plan 2 trailer on flat car service?

A. That is correct.

Q. You show there minimum weight in column 7, Mr. Frazee, and I notice the figures you use there are 25, with the letter M. M stands for thousand, does it?

A. That is correct.

Q. And that is not in the reference explanation, is it?

A. No, sir.

Q. Now, the second two rates are shown on this exhibit commencing with Column 14 and running over through Column 25 by the various weight brackets?

A. That is correct.

Q. And again you have entered there the percentage that those rates are of first class?

A. That is correct.

Q. Just as you have the Plan 2 rates of the railroad and the Eastern Central rates. That percentage of first class is a handy means of judging the level of the rate, is it not?

A. I would say so.

[fol. 1454] Mr. Keenan: May the record reflect in spite of the fact I don't understand that question and answer, I don't object to it.

Mr. Carpenter: Well, maybe we ought to straighten the record up.

By Mr. Carpenter:

Q. Do you mean if you compute the percentage the several rates are of the first class rate, you have some means then of judging the different levels of the rates, is that correct?

A. I would say so. I would say that a rate which reflects—maybe I might be wrong if I were pinned down, but a rate which might reflect 19 percent of first class is approximately the class 19 rate.

Q. Have you prepared another exhibit to compare the Section 2 rates here under investigation to the existing specific commodity box car rates of the New Haven from the origin points here involved to Chicago and St. Louis?

A. Yes, I have.

Mr. Carpenter: May this next document, consisting of some nine pages, excluding the cover page, entitled Statement Showing Comparison of Presently Published Rail Commodity Rates in New England Territory Railroads Tariff 26-F, be marked for identification with the next number.

Exam. Kane: It will be marked for identification, as Exhibit No. 39.

[fol. 1455] (Protestant's Exhibit No. 39, Witness Frazee, was marked for identification.)

By Mr. Carpenter:

Q. Looking at that exhibit, Mr. Frazee, particularly page 1 thereof, I note that you have made use of asterisks. What is the meaning of those asterisks in column 6?

A. Well, they designate the minimum weight applying in connection with the specific commodity rate.

Q. And the proposed rates, or the Section 2 rates, are shown in columns—

A. 8, 9 and 10.

Q. The rates are in column 8?

A. Right.

Q. 9 being the minimum weight and 10 being the computed charge for the shipment?

A. That is correct.

Q. In column 7, you have what appears to be a computed charge for the shipment. What is that?

A. Well, for instance, we have \$1.23, which is the rate, at a minimum weight of 30,000 pounds, and if the shipment moved at 30,000 pounds, the charges for that shipment would be \$369 in column 7.

On those shipments which would move in excess of the minimum weight of 30,000 pounds, that charge per shipment is also shown in column 7.

[fol. 1456] Q. Now, that computation there is what the shipper would pay at the existing box car rate published for specific application to that particular commodity?

A. That is right.

Q. If he shipped it in the quantity shown?

A. That is right.

Q. And that charge per shipment may be compared directly with the charge per shipment in column 10 for the same quantity which is computed at the Section 2 rates?

A. That is correct.

Q. The last two columns on the right, what are they?

A. They are the Eastern Central rates in column 11, and the minimum weight applicable to that rate in column 12.

Q. And you show there whether that is a class or commodity rate, do you?

A. I have shown—when it is a class rate I have shown the class. If it is a commodity rate, I have reference marks on there which refer to the commodity tariff or the exception tariff.

Q. I see. Now, looking at page 1 of your Exhibit 39, I call your attention to the rates on boots and shoes, canvas or rubber, in the lower portion of that exhibit—do you see it?

A. Yes, I do, from Boston to Chicago and St. Louis.

Q. From Boston to Chicago, the specific commodity rate maintained by the New Haven for box car transportation is [fol. 1457] \$2.35 a hundred pounds, is that correct?

A. That is correct, the minimum weight of 20,000 pounds.

Q. And what is the Section 2 rate for a similar shipment?

A. That rate is \$2.13 at the 20,000 pound minimum.

Q. So that the Section 2 rate would defeat the specific commodity rate in this interest, is that correct?

A. It sure would, yes.

Q. In other words, the shipper who shipped at the Section 2 rate for a total charge of \$426, while he would ship at a specific commodity rate for a total charge of \$476?

A. Yes, at minimum weights of 20,000 pounds.

Q. And then you computed the same information for each of the minimum weights, or shipments of assumed weights below?

A. At assumed minimum weights, yes.

Exam. Kane: Where, for example, is the rate for, let's say, 50,000 pounds, reflected on page 1? What is the rate for that minimum weight?

A. The rate would still be \$2.35 from Boston to Chicago.

By Mr. Carpenter:

Q. That is a specific commodity rate?

A. That is a specific commodity rate.

Q. While the Section 2 rate would be what?

A. It would be \$1.06, minimum weight 50,000 pounds.

Q. Now, what you are saying is that if the shipper in Boston wanted to ship a carload of boots and shoes, said shipment weighing 50,000 pounds, he would, prior to the [fol. 1458] effectiveness of the Section 2 rates, have paid the railroad \$1,175 for that transportation?

A. That is right.

Q. But under Section 2 rates, he pays the railroad only \$530, or less than half as much?

A. That is right.

Q. Is that correct?

A. That is correct.

Q. And the Eastern Central rate for that particular commodity is what, please, sir?

A. \$3.25 minimum weight, 60,000 pounds.

Q. Looking back at your first exhibit, which is No. 36, we already noted that at 70,000 pounds, the percentage that the Section 2 rates are of the 28300 first class rate is right at 18 per cent.

A. Approximately 19 per cent.

Q. Now, did you prepare another exhibit from the Uniform Freight Classification to determine or to show just what commodities are rated as low as that?

A. Yes, I did.

Mr. Carpenter: If the Examiner please, may this next document, consisting of six pages, exclusive of the cover page, and entitled "Statement showing articles named in Rail Uniform Classification No. 5" be marked with the next exhibit number?

[fol. 1459] Exam. Kane: It will be marked as Exhibit No. 40 for identification.

(Protestant's Exhibit No. 40, Witness Frazee, was marked for identification.)

By Mr. Carpenter:

Q. On this exhibit, you show the commodity description—I assume that is somewhat condensed, is it?

A. That is, that is abbreviated.

Q. And the rating is assigned to the commodity by the Uniform Freight Classification and the minimum weight in connection with it, is that correct?

A. That is correct.

Q. And this shows only those that carry ratings as low as 20 per cent or less?

A. Or less.

Q. Is this a complete list of all such commodities?

A. I don't know. I may have missed a few.

Q. You tried to make it a complete list?

A. This is as complete as I could get it, yes.

• • • • •

[fol. 1462] Cross examination.

By Mr. Keenan:

Q. Were you here when Mr. Hartmann testified?

A. Yes.

Q. Do you have a copy of his Exhibits 1 and 22? You have read Exhibit 1, I take it?

A. No, not completely.

Q. Have you looked at Exhibit 22—have you looked at it?

A. I looked at it when Mr. Hartmann testified.

Q. I will ask you, did you understand that Mr. Hartmann was picking out truck rates that he conceived to be competitive with rail transportation, listing them in Exhibit 22?

A. What was the question again?

Q. Did you understand that Mr. Hartmann was picking out truck rates that in his opinion were competitive with rail transportation and listing them in Exhibit 22?

A. Competitive with rail transportation in Plan II?

Q. Truck rates that the rails were meeting, or truck rates that carried traffic competitively with the railroads. Did you understand that?

A. No, I didn't.

Q. Did you find any errors in Exhibit 22 when you read [fol. 1463] it through?

A. No, I didn't check it that close.

Q. I notice, for example, do you agree with me that when we compare your Exhibit 38 with Exhibit 22, sheet 1—

A. Sheet 1 of 2?

Q. Yes, we come to Item 4 on sheet 1 of 22, asbestos articles from Bridgeport, Connecticut, we find a rate of \$2.47 applicable to a 10,000 pound minimum, and on page 1 of your Exhibit 38, there is a rate on asbestos articles from Bridgeport of \$2.47, 10,000 pound minimum. Those are the same rates, aren't they?

A. That is correct.

Q. Without loading the record with similar such observations, will you accept my proposition that there are a number of such identical rates in these two exhibits?

A. I would say generally that the rail Plan II rates meet the Eastern Central rates.

Q. Well, of course, the Eastern Central rates are listed in your Exhibit 38, aren't they?

A. Yes, they are.

Q. And Eastern Central publishes this rate on asbestos that I have just talked about, \$2.47, with 10,000 as shown in columns 11 and 12 of page 1 of your Exhibit 38, Item No. 3355?

A. That is correct.

Q. Now, is there any particular reason, Mr. Frazee, why [fol. 1464] you did not include in your Exhibit 38 the rates

on almanacs advertising, calendars, etc., in Items 1, 2 and 3, that Mr. Hartmann has included in his Exhibit 22?

A. No. I would say that the items I have shown here in Exhibit No. 38 were picked at random, and I will admit there are probably items that weren't used.

Mr. Carpenter: May I interject there?

Mr. Keenan: Well, I don't know until I hear it.

Mr. Carpenter: Isn't that the second item on page 1 of that Exhibit 38, advertising matter?

Mr. Keenan: Items 1, 2 and 3—thank you, Mr. Carpenter. I certainly didn't want to mislead the witness.

By Mr. Keenan:

Q. You haven't got any automobile parts, evidently, on your Exhibit 28, do you, such as in Items 7 and 8 of Mr. Hartmann's Exhibit 22?

A. No, sir, I don't see a listing for automobile parts.

Q. Sheet 8 of Exhibit 22 lists in considerably greater detail the rates, the truck rates on bronze, brass, copper, etc., than does page 2 of your Exhibit 38, isn't that right?

A. I would say so, yes, sir. Mine is marked as abbreviated commodity descriptions.

Q. And sheet 9 goes further into these brass, bronze and copper rates in greater detail than you have, right?

A. Yes, it does.

Q. 9 through 12, as a matter of fact, of Exhibit 22. Is [fol. 1465] there any difference between the percentage comparisons which you make on page 1 of your Exhibit 38 between the Section 2 box car rate, on the one hand, and the 2300 first class rate on the other—is there any difference between these percentage comparisons and the percentage comparisons set forth at page 8 of Exhibit 1? They are substantially the same, aren't they?

A. I would say they were, yes.

Q. You put in the extra decimal point in the ratio figures sometime where Mr. Hartmann hasn't, right?

A. That is right.

Q. On page 1 of your Exhibit 37, in column 3, the figures are the same, are they not, as the figures in column 2 of your Exhibit 36?

A. I will have to have that read back.

(Question read.)

The Witness: They should be.

By Mr. Keenan:

Q. At least so far as the Chicago destinations are concerned?

A. That is right.

Q. And have you made any study to determine how much rail traffic, or have you information as to how much rail traffic is moving on these present rail 28300 class rates that you list in Exhibit 37?

A. No, I have no idea.

Q. And your figures on page 1 of Exhibit 37, in columns [fol. 1466] 15, 16, 17, 18, 19 and 20 are the same for the corresponding destinations as the figures in your Exhibit 36, columns 3, 5, 7, 9, 11 and 12, right?

A. They should be, yes, sir.

Q. On Exhibit 40, you show in the carload ratings of articles taking a carload rating of Class 20 or closer. Do you have any information—well, I will withdraw that. Is it not true that there are lower commodity rates on the articles listed in Exhibit 40 than the class rates that are applicable to them?

A. I couldn't say.

Q. Mr. Frazee, will you repeat for me what you do for Eastern Central, what your duties are, your functions?

A. My duties at Eastern Central are the analysis of rail and motor carrier tariffs.

Q. And, Mr. Frazee, do you make the prices, do you make the decision as to what the rate levels are going to be that the motor carriers charge when they transport traffic, or does the management of the member motor carriers of Eastern Central make that decision?

A. Are you talking about an Eastern Central rate, or any motor carrier rate?

Q. Well, I am talking about the rates—

A. Published by Eastern Central?

Q. Yes.

A. No, I have nothing to do with that decision.

[fol. 1467] Mr. Carpenter: No redirect.

OFFERS IN EVIDENCE

I tender in evidence Exhibits 36 to 41, inclusive.

Exam. Kane: Is there any objection?

Mr. Keenan: No objection.

Exam. Kane: Exhibits 36 through 41, inclusive, are received in evidence.

(Protestant's Exhibit Nos. 36 to 41, incl., were received in evidence.)

Exam. Kane: The witness is excused.

(Witness excused.)

Mr. Carpenter: That completes the case for protestants, if the Examiner please.

Mr. Keenan: I will call Mr. Coyle on rebuttal, if the Examiner please.

HOLLIS H. COYLE was recalled and testified further as follows:

Direct examination.

By Mr. Keenan:

Q. Are you the same Mr. Coyle who has testified previously in this case?

A. Yes, sir.

Q. Did you hear Mr. Parr testify?

A. Yes, sir.

Q. Did you hear him testify concerning the practical necessity which in his opinion exists that the railroads [fol. 1468] recover revenue from the transportation of manufactures and miscellaneous traffic to contribute to the out-of-pocket and overhead cost burden of the railroad?

A. Yes, sir.

Q. Now, Mr. Coyle, do you receive requests to make cost analyses for the railroads' traffic department on the basis of which they can decide what price level they want to publish?

A. I receive many requests for cost information to assist them in making their decisions, yes.

Q. Please tell me what you do when you are making a cost analysis of this nature to assist the traffic people in reaching a decision as to how to publish rates?

A. I first ascertain the particular situation that they are dealing with, and if it is a broad situation—that is where the rates are great general in application as related to points, originating and terminating—I usually start with the costs which are shown in the I.C.C. statement, such as Statement 5-58, and analyze those figures to equate for the important differences between the particular situation with which I am dealing and the average figures which are shown in that statement.

For example, using as an example the case we are dealing with here, I would first point out to them that the fully distributed costs shown in Statement 5-58 include an allowance for the passenger deficit and the l.c.l. deficit, which [fol. 1469] is approximately ten per cent of the total so-called fully distributed cost, and that, of course, neither the passenger deficit nor the l.c.l. deficit will be affected or will have any effect on the movement of traffic under consideration, and therefore in the true sense is not a cost applicable to that movement.

I then analyzed the situation to see if there are any substantial other items which vary from the average, and in the case in point here, where a significant factor is that the traffic under these rates is moving entirely westbound, and knowing that insofar as the New England carriers are concerned, there is a constant movement of empty box cars westbound in excess of any requirement, and knowing that the theory underlying the average cost in Statement 5-58 is that on the average the movement of a loaded box car not only generates the movement of the car to carry the loading in the loaded direction, but also generates the movement of an empty box car, a mileage equivalent to 40 per cent of the loaded movement.

In this situation, we are dealing with here, the movement of the traffic in the direction of predominantly empty movement at all, since the empty movement is there already.

and in this particular case I would compute the amount included in the average cost to represent that empty movement, and, as I say, in this particular case I find it is the [fol. 1470] equivalent of approximately \$50 a car, and I would point that fact out to the traffic department for their consideration in establishing the rate which they feel will attract the traffic, or hold existing traffic, and still add to the contribution to total revenue requirements which was mentioned by Mr. Parr this morning.

I would also point out that as a matter of fact, even so far as the loaded movement was concerned that this additional or retained loaded movement would not increase the car movement, and the costs applicable to the car movement, because the car would move in any event, and point out in money terms that this, for the hauls we are dealing with in the Section 2 case, represented a cost included in the Statement 5-58 costs of approximately \$150 a car.

Those items I feel would be essential to the traffic department in making the decision as to what rate they should use in attempting to accomplish the purpose of retaining or obtaining additional contribution to earnings, which, as I stated previously, are so essential to the continuing welfare of the railroad.

Q. Now, does this matter of cost of moving empty tonnage on rail car affect in your opinion the out-of-pocket cost level?

A. It affects both the out-of-pocket and the fully distributed cost, because the \$50 and the \$150 that I mentioned before are identical in both the out-of-pocket and [fol. 1471], fully distributed costs stated in Statement 5-58.

Q. Your Exhibit 31 makes no allowance for these facts, is that right?

A. There is no diminution of either the out-of-pocket or the fully distributed costs stated there for the items that I have mentioned.

Q. Have you read Mr. Parr's Exhibit 33?

A. Yes.

Q. Does his Exhibit 33 in your opinion make any allowance for these facts?

A. No.

Mr. Keenan: You may cross-examine.

Cross examination.

By Mr. Carpenter:

Q. Mr. Coyle, as long as the railroad incurs a passenger and l.c.l. deficit, the railroad must do one of two things, must it not, if it is to avoid bankruptcy by reason thereof?

First, or one, to discontinue incurring the deficit, or, second, it should recoup that from some other operation?

A. To the extent possible by practical means, yes.

Q. That just has to be in order to avoid bankruptcy. Otherwise, the deficit would eat you up?

A. What I had in mind was, as has been the history of the New Haven in the past, it wasn't possible to keep out of bankruptcy. In other words, there is a limit to [fol. 1472] what you can do, and there are, of course, feasible, successful methods to accomplish the staying out of bankruptcy, and there are methods that can be tried that won't work but will tend to speed the time in which you will go into bankruptcy, if you make the wrong decision as to the method you will use to try to stay out of bankruptcy.

Q. But there are two things either of which must be accomplished if you are to avoid bankruptcy. One, you must eliminate the deficit, or, two, you must recoup that amount of money from some other operation?

A. That is correct, but I just wanted to be understood that you have got to eliminate it, if you can't do it theoretically, do it practically.

Q. Now, Mr. Coyle, you told us that you did not adjust the railroad cost scales of the Commission in making your Exhibit 31 to reflect the fact that there is empty movement of box cars now in the westbound direction, is that right?

A. That is correct.

Q. Now, had you adjusted that by eliminating the proportion that was charged to those computed costs for empty movement, you would thereby have burdened the eastbound traffic with an additional amount which it would have to bear for the empty movement, isn't that right?

A. No, sir.

Q. Well, would you have to burden—strike it and let me start over.

[fol. 1473] There is a cost involved in moving these empty box cars?

A. Oh, yes.

Q. Now, that is charged to the Commission's cost scales on an overall or joint basis, is it not?

A. That is correct.

Q. Now, if you excuse a particular traffic from having to bear its proper rate, its pro rata share of the empty movement, then by definition you are burdening all other traffic with the amount that you excused that particular traffic from bearing, isn't that right, arithmetic?

A. It is not a matter of arithmetic. It is what I was doing. I wasn't trying to excuse anything. I was trying to find the cost incurred in moving the traffic which wouldn't be incurred if the traffic didn't move. It is not a matter of excusing anybody. It is finding the cost applicable to the movement of the traffic. That is the purpose of making the analysis which I have just explained in reply to Mr. Keenan's question.

Q. But what you are talking about there is incremental cost, is that what you are talking about?

A. No, I am talking about the costs which are incurred, which are applicable to this movement, because the traffic moves.

Q. Well, now, let's go back. In computing the cost of providing service in any particular movement, you charge that cost, do you not, with a pro rata share of the empty movement of the equipment?

[fol. 1474] A. Not if I am trying to find out whether the railroad can improve its earnings by handling that traffic or not trying to handle it.

Q. Please, sir, Mr. Coyle, I guess I deserved your answer. Let me do it this way.

The Commission in its cost scales has charged the empty movement as a part of the operating expense, has it not?

A. Yes.

Q. Now, if you adjust those scales to eliminate a part, or the pro rata portion of those joint line costs—those joint empty movements costs that were charged there in order to reflect the fact that the traffic would be in the direction of the light movement, you would thereby be putting a portion of those costs back into all other traffic, would you not?

Exam. Kane: Do you understand the question?

The Witness: Yes, I understand the question. My delay in answering is merely that I want to make my answer clear, and I think the best way to make it clear is to say that if I was making a subdivision of, for example, the data contained on Table 1, in which I was subdividing, for example, the costs between New England and Chicago and St. Louis, between an eastbound and westbound direction, if I didn't charge any of the empty movement to the westbound direction, I would have to charge it all to the eastbound direction.

By Mr. Carpenter:

Q. So if you were computing, then, the charges for the [fol. 1475] movement from Chicago to New England, you would charge one hundred per cent of the empty movement?

A. It would be according to what purpose I was using the computation for.

Q. Well, now, you don't vary your costs by reason of the purpose you want to serve, do you?

A. I wouldn't be so varying the cost, I would be varying an application of a cost that existed already.

Q. For rate making purposes you would do that?

A. Insofar as the rates I was establishing were rates that was essential, if the railroad continued to have a maximum contribution to earnings for the requirements for the earnings.

Mr. Carpenter: That is all, thank you.

Mr. Keenan: No redirect.

Exam. Kane: May I ask you one question?

The Witness: Yes.

Exam. Kane: What is the ratio on the New Haven Railroad, passenger revenue versus freight revenue? In other words, is it more a predominating freight or passenger carrying?

The Witness: While it is more predominating freight, it has the highest ratio of passenger service to total service of any railroad in the country except the Long Island, and because of that situation, itself, its passenger problem is unique. It is rather anomalous that the New Haven has

the best passenger showing, that is it has proportionately [fol. 1476] the smallest deficit in passenger service of any railroad in the country except the Long Island, notwithstanding which fact its passenger service problem is the most acute of any railroad in the country, and I might add that it is a problem that because of that acuteness it can't be solved by trying to push rates of freight up so high that they can overcome it, because that would merely divert all of our traffic to the motor carriers and private carriers and other means of transportation, as well as, of course, take the industry out of New England and scatter it over other sections of the United States.

Exam. Kane: What you have said in effect is that the revenue from freight is higher than the revenue from passenger service?

The Witness: It is higher, yes. The ratio is 40 per cent passenger, 60 per cent freight.

Exam. Kane: That is what I had in mind. Thank you, sir. You are excused.

(Witness excused.)

Exam. Kane: Is there anything further to come before the Examiner?

Mr. Keenan: Yes, Mr. Examiner, another witness, Mr. Sabin.

GEORGE N. SABIN was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Please state your name, address and employment.

[fol. 1477] A. My name is George N. Sabin. My business address is 54 Meadow Street, New Haven, Connecticut, and I am employed as assistant general manager, freight rates, for the New Haven Railroad.

Q. Who is your immediate superior, Mr. Sabin?

A. Mr. Hartmann.

Q. At the present time, is Mr. Hartmann on what might be called leave?

A. That is correct.

Q. Who is responsible for the performance of Mr. Hartmann's duties just now?

A. I am.

Q. Please tell me what your experience has been in the transportation industry.

A. After graduation, obtained Bachelor and Master degrees, I entered the transportation field in the New York area with several motor carriers for a period from roughly 1931 to 1942 when I entered government service, and for a half of the eight years I was with the government, I was with the General Accounting Office as a transportation rate analyst, and then later with the Department of Justice.

In 1950, I was employed as an assistant general agent with the C&EI Railroad in Chicago, and I resigned as assistant vice president in 1959 of this year to join the New [fol. 1478] Haven as assistant general manager of freight rates.

[fol. 1483] Q. Now, Mr. Sabin, can you tell from Mr. Frazee's rate comparisons, Exhibits 36 through 39, how the Section 2 rates affect our revenues?

A. No, sir.

Q. What kind of comparison do you have to make in order to arrive—

A. You have to actually make comparison with rates that are actually moving traffic within our territory.

[fol. 1484] Q. Have we two such comparisons in evidence, in your opinion?

A. I believe so. We attempted to do it this way. I believe Exhibit 28, which we previously discussed, indicated the actual traffic we had moved under the Section 2 rates versus what the published rail rates are on the very same movements, of course Section 2 having thus eliminated the use or the application of those rates, but that indicates exactly the traffic that is being affected by our Section 2 rates, and then on Exhibit 29, Mr. Hartmann went a bit further by indicating the traffic that we have had moving in Plan 3 piggyback, and indicated what our revenues would be on that particular type of traffic had it moved under our new Section 2 rates.

Q. So in each instance you took some actual traffic that was moving and then repriced it?

A. That is right.

Q. In your opinion, which is the better way to assess the effect on revenues of the new rates, the way proposed by Mr. Frazee's Exhibits 36 through 39, or the way proposed by Exhibits 28 and 29 of Mr. Hartmann?

A. I would say Mr. Hartmann's method.

Q. Have you looked over Mr. Frazee's Exhibit 39?

A. Yes, sir.

Q. Have you been able in the short period of time that [fol. 1485] you have had to examine it, since you got to look at it a couple of hours ago, to assess whether it sets out the rail rates that are moving the traffic described there?

A. Well, as I say, I had little opportunity, but I tried to particularly survey something I believed I knew a bit about.

Q. Tell me what?

A. Well, as an illustration, and I notice it was particularly pointed out during direct examination of Mr. Frazee, the boots and shoes rate appearing on page 1 of Mr. Frazee's exhibit marked as No. 39 apparently indicates that the present rail rate on boots or shoes from Boston to St. Louis is \$2.69, minimum weight 20,000 pounds, and compares that, of course, to the Section 2 New Haven rates.

I found that Swenson's tariff, ICC 591, in Item 526.5 which now appears in Supplement 282, effective I believe September of this year, publishes rates on boots or shoes from Boston to St. Louis, and oddly enough publishes a series of rates which are exactly like our Section 2 rates from the 30,000 pound minimum, up.

In other words, it is \$1.72 at 30,000 pounds, \$1.32 at 40,000, \$1.19 at 50,000, \$1.06 at 60,000, \$1.01 at 70,000, and that is exactly what our Section 2 rates are which Mr. Frazee shows in Columns 8 and 9.

Q. What indication have you that the Eastern Central [fol. 1486] Motor Carriers Association never heard of these rates that you have just talked about right now?

A. I believe they heard of them. I believe they protested it.

Q. Could you give reference to their file number?

A. Apparently their file number is 40-C-3045, and it is dated April 10.

Q. And where did you get that file number from?

A. From you.

Q. No, the document you have in front of you.

A. It is a petition for suspension dated April 10, made by the Eastern Central Motor Carriers.

Mr. Keenan: You may examine.

Cross examination.

By Mr. Carpenter:

[fol. 1488] Q. Do you have the promiscuous loading rule you can now read into the record, Mr. Sabin?

A. Yes, sir. I would like to say that it appears to be applicable to most carriers, and I happened to use the tariffs I had available. I could give you the actual official citation, New England Territory Railroads, I. N. Doe's Tariff, I. N. Doe, Agent, ICC No. 593, and that rule is No. 35.

Would you want me to read the rule as it appears here in this tariff?

Exam. Kane: I think it would be best to read it into the record.

By Mr. Carpenter:

Q. Is it lengthy?

[fol. 1489] A. No, it is very short.

"On one consignment (except lumber provided for in Rule 525) shipped at one time by one consignor to one consignee at one destination which equals or exceeds the minimum carload weight provided in the official classification or tariffs governing the traffic. Rules 14, 24 and 34 of the official classification will not apply but the carload rate will be charged on the actual weight of the entire consignment when such weight is equal to or in excess of the carload minimum weight regardless of the number of cars which may be used to load such consignments."

Q. May I see that?

A. Just before the paragraph I read it limits it to freight, carload freight which is loaded into cars by initial carrier's employees—that is true, that is the limitation.

Q. Otherwise the rule would be wide open with respect to all traffic?

A. That is right.

.

[fol. 1490] Exam. Kane: On the record.

By Mr. Carpenter:

Q. Mr. Sabin, I think the Examiner had indicated earlier that he would like to have the record show what is meant by this traffic term "marriage rule." That is just a popular term utilized with respect to stop-off privileges, is it not?

A. That is correct.

Q. Do you have a rule there covering the stop-off privilege?

A. Yes, sir.

Q. Would you read that for us and tell us where you get it?

A. This rule, which happens to be Item 710 in New York, New Haven and Hartford Tariff ICC F-4501, is marked as Rule 12, and it reads this way:

"When a carload shipment to be loaded in more than one car is ordered by the shipper to be stopped off for completion of loading, this company may, for operating convenience, place a separate car or cars at stop-off point to be loaded with the freight that would otherwise be loaded therein to the car or cars containing the shipment ordered to be stopped, and such shipment and the car or cars so loaded at the stop-off point shall be treated in all respects as though such car or cars had been partially loaded at the origin station and actually stopped off at the stop-off [fol. 1491] point for completion of loading."

Exam. Kane: Is that referred to as the "marriage" rule?

The Witness: Well, commonly known in the trade, that is the marriage rule.

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[fol. 1495]

SUPREME COURT OF THE UNITED STATES

No. 719—October Term, 1963

ALL STATES FREIGHT, INC., et al., Appellants,

VS.

**NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY, et al.**

Appeal from the United States District Court for the
District of Connecticut.

• **ORDER NOTING PROBABLE JURISDICTION—March 30, 1964**

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdiction
is noted.

IN THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT
(Eastern Term, 1963)

JOHN S. FREEMAN, INC.; CHICAGO EXPRESS
COMPANY, INC.; LONG TRANSMISSION
CORP., N. A. MARY, INC.; RAMOS TRUCKING CO.,
INC.; BROADWAY EXPRESS, INC.; BRIDGES
EXPRESS, INC.; THE WESTERN EXPRESS COMPANY;
WESTERN FREIGHT FORWARDING COMPANY; and
NATIONAL CENTRAL MOTOR CARRIERS ASSOCIATION, INC.
Appellants

VS.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY, (Richard Joyce Smith, William J. Kirk,
and Henry W. Dorigan, Trustees) Et AL., Appellees

The Appeal from the United States District Court for the
District of Connecticut

JURISDICTIONAL STATEMENT

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December 31, 1963

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1963

No.

ALL STATES FREIGHT, INC.; CHICAGO EXPRESS, INC.;
EASTERN EXPRESS, INC.; LONG TRANSPORTATION COM-
PANY; W. L. MEAD, INC.; RAMUS TRUCKING LINE,
INC.; ROADWAY EXPRESS, INC.; SPECTOR FREIGHT
SYSTEM, INC.; THE WESTERN EXPRESS COMPANY;
WILSON FREIGHT FORWARDING COMPANY; and THE
EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.,
Appellants

v.

THE NEW YORK, NEW HAVEN and HARTFORD RAILROAD
COMPANY, (Richard Joyce Smith, William J. Kirk,
and Henry W. Dorigan, Trustees) ET AL., *Appellees*

On Appeal from the United States District Court for the
District of Connecticut

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the District of Connecticut was handed down on July 23, 1963, is reported at 221 F. Supp. 370, and is set forth in Appendix A hereto. The order entered by the Court is reproduced as Appendix B hereto. The

decision of the Interstate Commerce Commission, reported at 315 I.C.C. 419, is set forth as Appendix C hereto.

JURISDICTION

The suit was brought under 28 U.S.C. §§ 1336, 1398, 2284, 2321 through 2325 and 5 U.S.C. § 1009 to set aside and annul a report and order of the Interstate Commerce Commission. The order of the three-judge District Court (Appendix B) was entered on September 16, 1963, and Notice of Appeal was filed in that Court by appellants here on November 2, 1963.

The jurisdiction of the Supreme Court to review this decision on direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b) and is sustained by the following decisions: *Frozen Food Express v. United States*, 351 U.S. 40 (1956); *American Trucking Assos. v. Frisco Transp. Co.*, 358 U.S. 133 (1958); *Minneapolis & St. L. R. Co. v. United States*, 361 U.S. 173 (1959); *United States v. Drum*, 368 U.S. 370 (1962); and *Interstate Commerce Com. v. J-T Transport Co.*, 368 U.S. 81 (1961).

STATUTES INVOLVED

The provisions of the Interstate Commerce Act pertinent to this proceeding are as follows:

National Transportation Policy, 49 U.S.C. preceding §§ 1, 301, 901, and 1001

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation

and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.”

Section 1(6) of the Interstate Commerce Act, 49 U.S.C. 1(6).

“It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classi-

cation, regulation, and practice is prohibited and declared to be unlawful."

Section 1(5) of the Interstate Commerce Act, 49
U.S.C. 1(5)

"All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 2 of the Interstate Commerce Act, 49
U.S.C. 2

"That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3(1) of the Interstate Commerce Act, 49
U.S.C. 3(1)

"It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference, or advantage to any particular person, company, firm, corporation, association, locality, port,

port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 15a(3) of the Interstate Commerce Act,
49 U.S.C. 15a(3)

"In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act."

QUESTIONS PRESENTED

1. Whether the Court acted properly in setting aside the order of the Interstate Commerce Commission upon the ground that the Commission has already effectively legislated the modification of the meaning and purpose of Section 1(6) and ought not now to "boggle"¹ at the final step:

¹ Decision of the court below, 221 F. Supp. at p. 375, Appendix A hereto, p. 100, *infra*.

2. Whether a finding by the Court below of changed economic conditions is a proper basis for setting aside the Interstate Commerce Commission order which applied the statute as enacted by Congress.²

3. Whether the Court below properly substituted its judgment for that of the Interstate Commerce Commission as to the effect of a rate proposal upon the historic rate structure of the carriers while, at the same time, ignoring the factual findings of the Commission upon which that agency's judgment was predicated.

4. Whether the Court acted properly in setting aside as unsupported the decision of the Interstate Commerce Commission which held the rate proposal under investigation to constitute a destructive competitive practice where the evidence showed and the Commission found that the proposed rates would adversely affect the proponent thereof as well as competing carriers.

5. Whether the Court acted properly in setting aside an order of the Interstate Commerce Commission upon the ground that the Commission's jurisdiction may be adequately exercised under provisions of law other than one upon which the Commission's order was based.

² Thus, the Court below is in direct conflict with the three-judge Court in *Pennsylvania Truck Lines, Inc. v. United States*, 219 F. Supp. 871 (W.D., Pa. 1963) which sustained a decision of the Interstate Commerce Commission saying (219 F. Supp. at p. 875):

"While there may be some merit to the plaintiff's contention that changed conditions in the transportation industry since the enactment of the Interstate Commerce Act requires a reassessment of the National Transportation Policy with respect to railroads, this Court should not become the vehicle for reshaping the laws which Congress has written. The plaintiffs' appeal in that regard must be to Congress itself. The complaint must be dismissed."

STATEMENT

About the middle of the year 1959 the New Haven Railroad, followed for competitive reasons by the other railroads serving New England, published in tariffs filed with the Interstate Commerce Commission new "all-freight" rates applying upon shipments of straight carloads of virtually any commodity moving in interstate commerce. Said rates, stated in cents per hundred-weight, varied in accordance with the weights of the carloads shipped, ranging from the highest rates applicable to shipments of 20,000 pounds to the lowest applicable to shipments of 70,000 pounds. They applied from New England origins to Chicago, Illinois, and St. Louis, Missouri. By reason of their virtually all-inclusive character, they defeated and thereby supplanted all other and higher rates published by the railroads to apply upon specified commodities, described commodity groupings, and other categories of articles grouped for rate-making purposes. The purpose of the proposed rates, as stated by the New Haven, was to compete with the trailer-on-flatcar service of other railroads and to attract to itself and retain high-grade tonnage which might otherwise move by truck. As already observed, the other railroads serving New England filed equivalent rates in order to stay competitive with the New Haven.

After hearings and extended pleadings by the parties, the entire Interstate Commerce Commission upon reconsideration found the considered rates unlawful and ordered their cancellation. Two bases for the findings were specified:

- (1) The rates are violative of the requirement of Section 1(6) of the Act that the railroads estab-

lish, observe, and enforce just and reasonable classifications of property for transportation with reference to which rates are or may be made or prescribed; and

- (2) Actual experience under the rates had demonstrated that they constituted a destructive competitive practice in violation of the prohibition of the National Transportation Policy in that although additional traffic had been attracted, there had been virtually no increase in gross revenues.

The United States District Court for the District of Connecticut set aside the Commission's order on the ground that the provisions of Section 1(6) of the Interstate Commerce Act have no bearing in this instance and that the issues ought never to have been framed thereunder; that Sections 1(5), 2, and 3 of the Interstate Commerce Act [49 U.S.C. §§ 1(5), 2, and 3] vest the Commission with ample powers to regulate rates and charges without reference to Section 1(6); that by past administrative decisions the Commission has effectively legislated a modification of Section 1(6) and ought not now to "boggle" at the final administrative repeal thereof; that in any event, Section 15a(3) [49 U.S.C. § 15a(3)] forecloses the Commission from condemning the "all-freight" rates inasmuch as they have been shown to produce revenues in excess of out-of-pocket costs; and that even though by its terms the National Transportation Policy pervades the entire Act, its proscription of destructive competitive practices should not have been invoked by the Interstate Commerce Commission in this instance.

THE QUESTIONS ARE SUBSTANTIAL

This proceeding presents issues of nationwide significance which are of tremendous importance to the regulation of all transportation in interstate and foreign commerce. The decision of the Court below plainly lays down a new interpretation of the Interstate Commerce Act, said by the Court to be made necessary by reason of changed economic circumstances and past legislative modification through administrative decisions. Moreover, the decision of the Court below clearly holds that the meaning of the Interstate Commerce Act not only may but should be modified to fit the economic circumstances existing at the time of decision—in short, a rule by men rather than a rule by law.³ Finally, the Court below has ignored the findings by the entire Commission that during the period in which the effect of the “all-freight” rates upon the revenues of the New Haven Railroad had been studied, that railroad had transported more than 4,000,000 pounds of additional traffic in return for only \$129 in added gross revenue. In the face of that factual finding, the Court below overturned the Commission’s conclusion that the rates constitute a destructive competitive practice.

In *New York, New Haven and Hartford Railroad Co. v. United States*, 199 F. Supp. 635 (1961), vacated 372 U.S. 744 (1963), the same Court below set aside an order of the Interstate Commerce Commission for the reason, among others, that it was predicated upon the “value of service concept” of rate-making which the Court below condemned as among the “official discriminations, hallowed and encrusted

³ This holding is directly contrary to that in *Pennsylvania Truck Lines, Inc. v. United States*, 219 F. Supp. 871, 875 (W.D. Pa. 1963).

by time and inertia (which) now pervade the rate structure." The Supreme Court in its opinion in *I.C.C. v. New York, N.H. & H.R. Co.*, U.S., 10 L. Ed. 2d 108, (1963), specifically withheld consideration of that discussion. The Court below now invokes the same hypothesis to support another condemnation by it of a decision by the Interstate Commerce Commission. This has been done by the Court below in spite of the fact that the provisions of Section 1(6) of the Interstate Commerce Act require the maintenance by the railroads of rates which must have a just and reasonable relationship to each other (classifications) to reflect the almost infinite variation between and among the articles and commodities which are transported in interstate commerce.

All-freight rates applicable on straight as opposed to mixed shipments are unlawful because differential pricing of transportation is required by the Act, whether such pricing reflects value of service or some other consideration. And differential pricing is a necessity if the opinion of the Supreme Court in *Baltimore & Ohio Railroad Co. v. United States*, 345 U.S. 146 (1953), is to have any significance. There, the Court sustained an order of the Interstate Commerce Commission which required the railroads to transport certain kinds of fresh vegetables at charges which were below the computed out-of-pocket costs of such transportation, the Court holding that this was lawful if the total traffic of the railroads was sufficiently profitable to assure continued service.

It follows, of course, that if the Commission has the power to require the railroads to transport a given segment of traffic at less than cost, the Commission must likewise have the power to require the railroads

to transport other traffic at rates substantially in excess of cost so that the ability of the railroads to meet the nation's needs with respect to the first category of traffic will be preserved. That is why Section 1(6) of the Interstate Commerce Act makes it "the duty of all common carriers * * * to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed * * *." It is likewise why Section 2 of the Interstate Commerce Act makes it unlawful for any railroad "by any * * * device" to "charge * * * or receive from any person * * * a greater or less compensation for any service rendered, or to be rendered, in the transportation of * * * property * * * than it charges * * * or receives from any other person * * * for * * * a like and contemporaneous service in the transportation of a *like kind of traffic* under substantially similar circumstances and conditions." (Emphasis ours) It is likewise why Section 3(1) of the Act makes it unlawful for any railroad "to make, give or cause any undue or unreasonable preferences or advantages to * * * any particular *description of traffic* * * * or to subject * * * *any particular description of traffic* to any undue or unreasonable preference or disadvantage in any respect whatsoever." (Emphasis ours)

The Supreme Court has itself heretofore interpreted the Interstate Commerce Act as not only authorizing but requiring the Interstate Commerce Commission to see to it that the railroads maintain rates and charges which are just, reasonable, non-discriminatory, and non-preferential as between the various classes of traffic and the various classes and kinds of commodities. That was the thrust of the decision in *Ann Arbor R. Co. v.*

United States, 281 U.S. 658 (1930), which held that the Hoch-Smith Resolution, 49 U.S.C. § 55, had merely restated the requirements of the Interstate Commerce Act in that regard. The Commission itself called attention to this matter in its own report accompanying its order requiring that the rates under consideration be cancelled.

The report and order of the Commission which the Court below set aside was concurred in by a majority of eight of the eleven Commissioners. The view of that majority that the meaning and purpose of Section 1(6) of the Interstate Commerce Act [49 U.S.C. § 1(6)] has been clearly spelled out by the Supreme Court and must be reflected in the administrative policies of the Commission regardless of changed economic circumstances and hard problems of carrier competition was directly challenged by dissenting Commissioner Webb who, at the very close of his comments, said:⁴

“A good argument can always be made for the proposition that the settled policies of the Interstate Commerce Commission, whether the result of action or inertia, should be altered only by the Congress. The better view, in my opinion, is that the Congress, in delegating authority couched in such broad terms as ‘just and reasonable,’ intended the Commission to adjust its regulation in the light of changes in the industry and, whenever deemed necessary, to scuttle outmoded theories and practices without regard to their antiquity. * * *”

The Court below has gone further than Commissioner Webb and has held that the Commission not only can but also must complete the job of legislative modification of Section 1(6) of the Interstate Commerce Act

⁴ 315 I.C.C. at p. 433.

[49 U.S.C. § 1(6)]. The court said as much when it stated at pages 374 and 375 of its opinion:

"The Commission fears that approval of these rates would be legislation on its part, apparently because it would be the final blow to classification as a control over minimum rates and a further weakening of its role as a 'giant handicapper.' Having permitted over a long period exceptional rates which actually move the vast preponderance of this traffic at rates below the class rates, it would seem that it has already effectually legislated or interpreted the modification of what it now claims was the original meaning and purpose of § 1(6). It is strange to find it boggling at this final step of so little effect on traffic actually moving under class rates. In any case, we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15a(3). The record discloses no violation of these sections. It would appear that the Commission here invokes § 1(6) as a means of preserving a basis for the 'value of service' concept in ratemaking referred to above, in a desire to hold fast to a past which has already slipped away beyond our reach."

If the provisions of the Interstate Commerce Act are to be legislatively modified, it should be by the Congress of the United States and not by the Interstate Commerce Commission or, for that matter, by the United States District Court for the District of Connecticut.

CONCLUSION

The questions presented by this appeal are substantial and are of sufficient public importance as to re-

quire plenary consideration with briefs and oral argument for their resolution.

Respectfully submitted,

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December 31, 1963

APPENDIX A

**THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY (Richard Joyce Smith, William J. Kirk, and
Harry W. Dorigan, Trustees), et al., *Plaintiffs*,**

v.

**UNITED STATES OF AMERICA AND INTERSTATE COMMERCE
COMMISSION, *Defendants*.**

Civ. A. No. 9229.

**United States District Court
D. Connecticut.**

July 23, 1963.

• • • • •
Thomas P. Hackett, Eugene E. Hunt, New Haven, Conn.,
Edward A. Kaier, Philadelphia, Pa., for plaintiff.

John S. Fessenden, Homer S. Carpenter, Washington,
D. C., Robert J. Gillooly, New Haven, Conn., for de-
fendants.

John H. D. Wigger, Atty., Dept. of Justice, Washington,
D. C., Lee Loevinger, Asst. Atty. Gen., Robert C. Zampano,
U. S. Atty., for the United States.

Robert W. Ginnane, Gen. Counsel, Fritz R. Kahn, Asst.
Gen. Counsel, Interstate Com. Commission, Washington,
D. C., for I. C. C.

Before SMITH, Circuit Judge, ANDERSON, Chief District
Judge, and BLUMENFELD, District Judge.

J. JOSEPH SMITH, Circuit Judge.

This is an action under 28 U.S.C. §§ 1336, 1398, 2284 and
2321-2325,¹ and 5 U.S.C. § 1009, in which the New York,

¹“§ 1336. Interstate Commerce Commission's orders

“Except as otherwise provided by Act of Congress, the district
courts shall have jurisdiction of any civil action to enforce, enjoin,

New Haven and Hartford Railroad Company and its trustees in reorganization and 18 other railroad corpora-

set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

"§ 1398. Interstate Commerce Commission's orders

"Except as otherwise provided by law, any civil action to enforce, suspend or set aside in whole or in part an order of the Interstate Commerce Commission shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action."

"§ 2284. Three-judge district courts; composition; procedure

"In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

"If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

"Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and

tions seek to set aside and annul a report and order of the Interstate Commerce Commission in Investigation and

identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and, in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State."

"§ 2321. Procedure generally; process

"The procedure in the district courts in actions to enforce, suspend, enjoin, annul or set aside in whole or in part any order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties and forfeitures, shall be as provided in this chapter.

"The orders, writs, and process of the district courts may, in the cases specified in this section and in the cases and proceedings under sections 20, 23, and 43 of Title 49, run, be served, and be returnable anywhere in the United States."

"§ 2322. United States as party

"All actions specified in section 2321 of this title shall be brought by or against the United States."

"§ 2323. Duties of Attorney General; intervenors

"The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in actions under

Suspension Docket No. 7131, *All commodities from New England to Chicago and St. Louis*, in which the Commission, three commissioners dissenting, overruled a report and order of its Division 2, and struck down so-called all-commodity rates on mixed or straight shipments of manufactured articles published by the New Haven and other plaintiffs, finding the rates to be a destructive competitive practice and unjust and unreasonable in violation of sec-

sections 20, 23, and 43 of Title 49, in the district courts, and in the Supreme Court of the United States upon appeal from the district courts.

"The Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

"Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

"The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein."

"§ 2324. Stay of Commission's order

"The pendency of an action to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall not of itself stay or suspend the operation of the order, but the court may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the action."

"§ 2325. Injunction; three-judge court required

"An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

tion 1(6) of the Interstate Commerce Act, 49 U.S.C. § 1(6), Act of June 18, 1910, c. 309, § 7, 36 Stat. 544. We find the Commission's order unlawful because based on an erroneous interpretation of § 1(6) of the Act and order it set aside and annulled.

The New Haven, faced with loss of traffic to highway carriage and TOFC (trailer on flatcar carriage) which latter it was not in a favorable position to handle extensively because of equipment and clearance difficulties, and plagued with a large tonnage of empty boxcars moving West, devised a schedule of reduced boxcar rates on freight in straight or mixed carloads from points in New England territory to Chicago and East St. Louis, Illinois, Gibson and Hammond, Indiana, and St. Louis, Missouri, and filed appropriate tariffs containing these rates. Competing railroads followed suit. Eastern Central Motor Carriers Association, Inc. filed protests and petitions for suspension of the New Haven schedules. Later, 10 of its member carriers joined in the protests. The Commission suspended the schedules and instituted investigations. Subsequently, on petition of the New Haven and certain intervening shippers the suspension was vacated and the rates became effective July 16, 1959, the investigation, however, proceeding to its conclusion December 28, 1961 in the order under review.

The Commission's principal argument in support of its order is the asserted violation of § 1(6) of the Act and its claimed destructive effect on the general rate structure. Under § 1(6), it is "the duty of all common carriers * * * to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or proscribed * * * and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful." Under this provision all carriers subject to the Act publish classifications,

in groupings, of all commodities subject to transportation, and tariffs, that is rates per hundred pounds, at which articles in each classification grouping will be carried between any two points. These are the class rates. The characteristics of the commodities considered in fixing classification ratings are generally:

1. Shipping weight per cubic foot.
2. Liability to damage.
3. Liability to damage other commodities with which it is transported.
4. Perishability.
5. Liability to spontaneous combustion or explosion.
6. Susceptibility to theft.
7. Value per pound in comparison with other articles.
8. Ease or difficulty in loading or unloading.
9. Stowability.
10. Excessive weight.
11. Excessive length.
12. Care or attention necessary in loading and transporting.
13. Trade conditions.
14. Value of service.
15. Competition with other commodities transported.

The most important are density of the item (light, bulky goods are charged more per 100 pounds as it takes more cars to carry a given tonnage), perishability, difficulty in handling, and value of service. Under the latter, commodities of higher value, whose transportation characteristics were otherwise no different from those of lower value have historically been charged higher rates. The semimonopoly position of the railroads allowed them to do this well into this century. By exacting a premium charge from high-priced commodities, the railroads were enabled to carry low-priced goods at rates not much above the out-of-pocket costs of carriage. Many times, these low rates were necessary as the lower-priced goods could not

compete in the market to which they were brought unless the transportation costs were low. Otherwise, they would not move at all, and the traffic was desirable for the railroad as it did contribute something towards overhead. Common carrier and private trucks have today skimmed off most of the high-rated traffic, leaving the railroads with the unprofitable freight and resulting deficits.

A second type of rate is the commodity rate. This is often described as a "concession to a particular situation" (Commission Brief, p. 14) or in some other terms implying that it is an extraordinary deviation from the normal pattern of class rates. It is a particular price quoted for freight of a particular kind from one place to another. It is lower than the class rates, and set to meet competition (either rail or by other carrier) that would otherwise take away the traffic. It is not a recent innovation, but seems historically to have always been part of the rate structure. See ICC 17th Ann. Rep. pp. 115-16 (1903). Thus, its status as exceptional is questionable. Further, commodity rates appear to have largely superseded the class rates. Only about 1 (one) percent of all railroad carload tonnage in the East moves on class rates.

All-commodity rates (sometimes called all-freight rates) are a natural outgrowth of the rate structure. Since cost of handling is greater, rates on less-than-carload-lots (LCL) are higher per hundred pounds than rates on carload lots. This appears to be true of both class and commodity rates. Shippers thus tried to tender carload lots for shipment. The problem arose when a shipment of mixed articles was tendered. Unless the articles were of the same class, the shipper was at first charged the LCL rate on each item, thus paying high charges for what was actually more like carload service. To remedy this, the mixing rule (Rule 10) was instituted, allowing shipment of a mixed carload at the carload rate and minimum weight of the highest class of article. This concession

permitted the growth of the freight forwarders. They operated by collecting LCL shipments and shipping them at the carload rate, making a profit out of the difference between the carload rate they were charged and the LCL rate which was approximately their charge to the original shipper. With the growth of motor carriers, the railroads began to lose this freight to them—both the LCL shipments and the freight forwarder shipments moved increasingly by truck. The railroads countered with rates for truck bodies, containers (holding any goods), and rates for all-commodities, regardless of their class. The Commission found little difficulty approving this kind of all-commodity rates, especially since they were generally either subject to a mixing rule (e. g., no more than 60% by weight of a shipment may be of one commodity) or were higher than the carload class rates that would otherwise have applied. All-Commodity Rates Between California and Oregon, Washington, 293 ICC 327 (1954); All Freight, Straight Carloads, To and From the South, 258 ICC 579 (1944); All Freight from Butte, Mont., to Spokane, Wash., 257 ICC 291 (1942); All-Freight Rates to Points in Southern Territory, 253 ICC 623 (1942); All Freight to Pacific Coast, 248 ICC 73 (1941), aff'd sub nom. Pacific Inland Tariff Bureau v. United States, 50 F. Supp. 376 (W.D. Wash. 1943); All Freight from Chicago and St. Louis to Santa Rosa, N. Mex., 243 ICC 517 (1941); All Freight Between Harlem River, N. Y. and Boston, 234 ICC 673 (1939); All Freight Between St. Louis and Kansas City, 234 ICC 589 (1939); All Freight from Chicago and St. Louis to Birmingham, 226 ICC 455 (1938); Commodities Between Chicago, Ill. and Twin Cities, 226 ICC 356 (1938). All-commodity rates on straight shipments (no mixing rule) thus almost never supplanted the classifications or the commodity rates on carloads then in force, except for the LCL freight, and the railroads themselves at that time had no intention of generally superseding the existing rates. See All Freight, Straight Carloads, To and From the

South, 258 ICC 579 (1944). The all-commodity rate was thought of as meeting this particular problem only.

The present rate is an advance only in that it is lower than the existing class and commodity rates, and is intended to apply to the exclusion of those rates on the commodities that it covers. But it is not what the layman would call "all-commodity" either. It excludes anything that cannot be carried in a boxcar—this is obviously a substantial number of things; it is graduated according to minimum weight per car, denser items thus paying less per hundred pounds as has always been true; it excludes perishables, easily damaged goods, explosives, and other such goods whose cost of handling might be extreme; it applies only to freight westward; and there are other exclusions on basis of cost of shipment and handling.

The just and reasonable classification requirement of § 1(6) was adopted in 1910 to give the Commission power to control classification, there being some doubt as to the existence of the power, and its purpose was to protect shippers by controlling the maximum charges for transportation of commodities. This purpose is fulfilled by the maintenance in being of class rates even though competitive conditions lead to the furnishing of service through variously constructed rates at lower charges. The practice of the Commission over the past 21 years, as pointed out by Commissioner Webb in his dissent in the instant case, was consistent with this interpretation, permitting competitively compelled departures from the classification in e. g. All Freight to Pacific Coast, 248 ICC 73, aff. Pacific Inland Tariff Bureau v. United States, 50 F. Supp. 376 (W.D. Wash. 1943), and cases cited, *supra*, [sic] We can see no difference in principle between those cases and the one before us and no sound reason for so interpreting § 1(6) as to prohibit such competitively compelled departures from classifications, within the established maxima, absent some

other violation of the Act than the mere departure from the classification.

The Commission fears that approval of these rates would be legislation on its part, apparently because it would be the final blow to classification as a control over minimum rates and a further weakening of its role as a "giant handicapper." Having permitted over a long period exceptional rates which actually move the vast preponderance of this traffic at rates below the class rates, it would seem that it has already effectually legislated or interpreted the modification of what it now claims was the original meaning and purpose of § 1(6). It is strange to find it boggling at this final step of so little effect on traffic actually moving under class rates. In any case, we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15a(3).² The record

²"§ 1, par. (5). "Just and reasonable charges. All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

"§ 2. Special rates and rebates prohibited

"If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

"§ 3, par. (1). "Undue preferences or prejudices prohibited. It shall be unlawful for any common carrier subject to the provi-

discloses no violation of these sections. It would appear that the Commission here invokes § 1(6) as a means of preserving a basis for the "value of service" concept in ratemaking referred to above, in a desire to hold fast to a past which has already slipped away beyond our reach.

This "value of service" principle was useful in the early years of the Interstate Commerce Act in requiring the more prosperous East to assist in the development of railroads and commercial and agricultural enterprises in the undeveloped West at a time when the existing railroads were powerful monopolies. In his opinion in *New York, New Haven & Hartford R. Co. v. United States*, 199 F. Supp. 635, 643 (D.C. 1961), vacated *I. C. C. v. New York, N. H. & H. R. Co.*, 372 U.S. 744, 83 S. Ct. 1038, 10 L. Ed. 2d

sions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

"§ 15a. Fair return for carriers"

"(3) In a proceeding involving competition between carriers of different modes of transportation subject to this chapter and chapters 8, 12, 13 and 19 of this title, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this chapter and chapters 8, 12, 13 and 19 of this title.

108, Judge Hincks described the value of service concept as among the "official discriminations, hallowed and encrusted by time and inertia, (which) now pervade the rate structure." The continuing application of the principle is, however, contrary to the letter and spirit of the National Transportation Policy amendment to the Interstate Commerce Act, passed in 1940, 49 U.S.C. note preceding § 1, which, as its legislative history makes clear, was intended to permit the railroads, no longer effective monopolies, to respond to competition by asserting whatever inherent advantages of cost and service they possessed.

The Commission also concludes that the rates at issue constitute a destructive competitive practice under § 15a(3) of the Interstate Commerce Act. This term was meant to be applied only in the context of competition between different modes of transportation and not for the purpose of supporting the classification provisions of the Act. This phrase, in its proper area of application, was dealt with by this court in *New York, New Haven & Hartford R. Co. v. United States*, supra, [see also *Missouri Pacific R. Co. v. United States*, 203 F. Supp. 629, 634 (E.D. Mo. 1962)], as follows:

" . . . the differential prohibition was intended to be qualified only when factors other than the normal incidents of fair competition intervened, such as a practice which would destroy a competing mode of transportation by setting rates so low as to be hurtful to the proponent as well as his competitor or so low as to deprive the competitor of the 'inherent advantage' of being the low-cost carrier. The 'inherent advantage' factor and the 'destructive competitive practice' factor were the only two policy factors mentioned in the committee reports. . . . "

The finding that the rates will be destructive of competition rests on a basis not entirely clear to us. It

would appear rather that they would enable the railroads "to respond to competition by asserting whatever inherent advantages of cost and service they possessed." The rates are admittedly compensatory, exceeding the out-of-pocket costs and in most instances making a substantial contribution to overhead. There is no finding based on evidence that the rates would destroy or impair the inherent advantages of other modes of transportation. The finding of destructive competition is not adequately supported on the present record.

The issues of this case should never have been framed under §1(6) nor should the meaning of the National Transportation Policy, as referred to in §15a(3), have been distorted to supplement it.

The order under review is annulled and set aside.

APPENDIX B

Filed Sep. 16, 1963

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. 9229

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY (Richard Joyce Smith, William J. Kirk, and
Harry W. Dorigan, Trustees), et al., *Plaintiffs*

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE
COMMISSION, *Defendants*

Judgment

This cause having been heard on the plaintiff's complaint under 28 U.S.C. §§ 1336, 1398, 2284 and 2321-2325, and 5 U.S.C. § 1009, seeking to enjoin, set aside, and annul a report and order of the Interstate Commerce Commission

dated December 28, 1961 in Investigation and Suspension Docket No. 7131, *All Commodities from New England to Chicago and St. Louis*, and related cases, to the extent that such report and order found unlawful and unreasonable certain freight rates as described therein; and the parties appearing by counsel having been heard and the issues duly tried; and the Court having concluded in its opinion that plaintiffs are entitled to judgment:

It is hereby Ordered, Adjudged and Decreed that the above described report and order of the Interstate Commerce Commission entered December 28, 1961, to the extent that certain freight rates, more specifically described therein, were found unlawful, be annulled and set aside in accordance with the opinion of this Court, and that the United States or the Interstate Commerce Commission, or their agents or employees, are hereby enjoined from enforcing them.

Issued at New Haven, Connecticut, this 16th day of September, 1963.

J. JOSEPH SMITH
U.S.C.J.

ROBERT P. ANDERSON
U.S.D.J.

M. JOSEPH BLUMENFELD
U.S.D.J.

APPENDIX C
INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET No. 7131¹
ALL COMMODITIES FROM NEW ENGLAND TO CHICAGO
AND ST. LOUIS

Decided December 28, 1961

Reduced all-freight rates, in straight or mixed shipments, from points in New England to Chicago and East St. Louis, Ill., Gibson and Hammond, Ind., and St. Louis, Mo., found unjust and unreasonable. Findings in prior report, 313 I.C.C. 275, reversed. Unlawful rates ordered canceled, and proceedings discontinued.

Appearances as shown in prior report and, in addition: *Homer S. Carpenter* and *John S. Fessenden* for interveners in support of protestant.

REPORT OF THE COMMISSION ON RECONSIDERATION

HERRING, Commissioner:

In the prior report, 313 I.C.C. 275, division 2 found that reduced boxcar rates² on all freight, with a few exceptions,³

¹ This report embraces also No. 33185, All Freight from Connecticut, Massachusetts, and Rhode Island to Chicago and St. Louis; No. 33193, Freight, All Kinds, from Maine to Chicago and East St. Louis, Ill.; No. 33202, All-Freight Rates from New England to Illinois, Indiana, and Missouri; and No. 33269, All articles from Windsor, Vt., to East St. Louis, Ill., and St. Louis, Mo.

² Rates, charges, and costs are stated per 100 pounds.

³ Perishable freight, livestock, military equipment, explosives, scientific equipment, and every commodity with a loss and damage expense in excess of 8.747 cents per 100 pounds as indicated in public statement No. 5-58, prepared by the Commission's cost finding section.

in straight or mixed carloads, from points in New England territory to Chicago and East St. Louis, Ill., Gibson and Hammond, Ind., and St. Louis, Mo., were just and reasonable. Ten individual motor carriers,⁴ members of the protestant Eastern Central Motor Carriers Association, Inc., intervened in these proceedings in support of the protestant. Upon petition of the protestant and interveners, and reply thereto by the New York, New Haven and Hartford Railroad Company, referred to herein as the respondent or the New Haven, we reopened these proceedings for reconsideration on the record as made. The facts stated in the prior report will be repeated only where necessary for a clear understanding of the issues.

Division 2, acting as an appellate division, vacated the order of suspension in the title proceeding, but continued the investigation. Since the schedules in the embraced proceedings were not suspended, all of the considered rates have become effective. Nevertheless, for convenience, they will sometimes be referred to herein as proposed rates.

The rates under investigation were published in section 2 of a tariff embodying all-freight boxcar rates. They alternate with the previously established all-freight boxcar rates contained in section 1 of the tariff, depending on which produces the lowest charge. Section 1 rates apply only on mixed shipments of at least five commodities, with no one commodity exceeding 50 percent of the total consignment. The New Haven was the only respondent to present evidence in support of these rates. On brief, the respondents Boston and Maine Railroad, Maine Central

⁴ All States Freight, Inc., Chicago Express, Inc., Eastern Express, Inc., Long Transportation Company, W. L. Mead, Inc., Ramus Trucking Line, Inc., Roadway Express, Inc., Spector Freight System, Inc., The Western Express Company, and Wilson Freight Forwarding Company intervened for the purpose of filing a joint petition for reconsideration with protestant Eastern Central Motor Carriers Association, Inc.

Railroad Company, and The New York Central Railroad Company stated that their only reason for joining in these rates was to remain competitive with the New Haven.

The proposed (section 2) rates are scaled to weight minima which range in 10,000-pound increments from 20,000 pounds to 70,000 pounds. They apply on service in boxcars only, and no transit privileges requiring the use of more than one car per shipment are permitted. They exclude import-export or ex-water traffic, and the 20,000- and 30,000-pound rates are limited to movements in cars not exceeding 40 feet 7 inches in length. Representative rates from Boston to Chicago range from 213 cents, minimum 20,000 pounds, to 90 cents, minimum 70,000 pounds, and represent from 45 to 19 percent of first class. Since the proposed rates are not subject to a mixing rule, it appears that they represent the highest level at which the bulk of the New Haven's westbound traffic would move.

The New Haven's stated purposes in establishing the section 2 rates are to attract and retain high grade tonnage which might otherwise move by truck and compete with plan III trailer-on-flatcar (TOFC) service. The plan III rates are published as charges per maximum consignment of 70,000 pounds, in no more than two trailers on one flatcar. Under the TOFC rates, the shipper must furnish the trailers. However, these rates are subject to a mixing rule which requires that no one commodity may comprise more than 60 percent of the total shipment.

The respondent has been unable to compete effectively for the plan III traffic because of its general shortage of cars and because of physical clearance problems when handling high-cube trailers. Within 2 months after the establishment of the plan III service on July 21, 1958, the New Haven lost the equivalent of over 400 boxcar loads of this traffic to the New York Central. The New Haven subsequently improved its facilities so that at the time of the

hearing herein it could participate in plan III service over its Maybrook gateway.

A survey was made by the New Haven of all the traffic moving from origins on its lines at the section 2 rates to these destinations on and between July 16 and September 30, 1959. There were 364 shipments, 186 of which originated at Boston, Mass. The study shows the total revenues resulting from the section 2 rates, and what the revenues would have been had the traffic moved under the section 1 boxcar rates. The shipments were segregated into (a) traffic that previously moved in boxcars, (b) traffic that previously moved partly by rail and partly by other modes of transportation, and (c) traffic that previously moved by other than rail transportation, as indicated in the following table:

| | Number of cars | Rated weight | Revenue | Average weight per car | Average revenue per car |
|---------------------------------|-------------------|-----------------|--------------|------------------------------|-------------------------------|
| | | <i>Pounds</i> | | <i>Pounds</i> | |
| At section 2 proposed rates: | | | | | |
| Group (a) | 255 | 12,296,077 | \$144,709.86 | 48,220 | \$567.49 |
| Group (b) | 67 | 3,725,627 | 38,182.03 | 55,606 | 569.88 |
| Group (c) | 42 | 2,430,664 | 24,522.26 | 57,873 | 583.82 |
| Total | 364 | 18,452,368 | \$207,414.15 | 50,693 | 569.82 |
| At section 1 boxcar rates: | | | | | |
| Group (a) | 255 | 11,648,857 | 178,529.42 | 45,682 | 700.11 |
| Group (b) | 67 | 3,621,435 | 57,511.39 | 54,051 | 858.37 |
| Group (c) | 42 | 2,359,062 | 33,756.22 | 56,168 | 803.71 |
| Total | 364 | 17,629,354 | \$269,797.03 | 48,432 | 741.20 |

The study shows also that 50 percent of the group (b) traffic formerly moved at the section 1 rates, and had it continued to do so, would have yielded \$28,755.69 in revenue. On the basis of these calculations, the traffic previously handled by the New Haven would have yielded, under the section 1 rates, total revenue of \$178,529.42 and \$28,755.69, or \$207,285.11, which is \$129 less than the total revenue of \$207,414.15 under the section 2 rates from all of the 364

shipments. Thus, for this period, the respondent moved over 4 million pounds of additional traffic in return for \$129 in added revenue. This represents less than one-third of a cent in revenue for each additional 100 pounds of traffic moved.

The cost evidence of record, based on average eastern-district costs, indicates that the section 2 rates exceed the out-of-pocket costs, and in most instances make a substantial contribution to overhead. The findings in the prior report were based primarily on the apparent compensativeness of the proposed rates. It appears to us, however, that a more serious aspect of these proceedings and one which is of primary importance here, is the alleged violation of section 1(6) of the act and its effect upon the general rate structure.

Section 1(6), to the extent here pertinent, reads as follows:

It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, * * * and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

The New Haven asserts that this paragraph of the act was enacted to protect the shipper from abuses arising from a lack of competition. It is argued that there is justification for these section 2 rates, since commodity rates which are not based solely on the usual classification principles are lawful where the movement of traffic is frustrated at higher rate levels.

All-commodity rates.—Historically, all-commodity rates were first published in official territory in 1932. They re-

flected 70 percent of the first-class rates as prescribed in *Eastern Class Rate Investigation*, 164 I.C.C. 314, and subsequent reports, and were published to compete with container rates on less-than-carload traffic. The all-commodity rates were subject to a 30,000-pound minimum, while the minimum weight for a single container was only 4,000 pounds. Subsequently, additional all-commodity rates were established in and between most of the ratemaking territories on the basis of from 40 to 70 percent of first class. In certain instances they went below 40 percent of first class, chiefly in order to meet TOFC competition. In August of 1949, the railroads in official territory established 50 percent of first class as the maximum basis for all-commodity rates because they were losing a considerable amount of forwarder traffic. Shortly thereafter, this basis was reduced to 45 percent.

Since 1932, numerous all-commodity or all-freight rail rates at varying percentages of first class have been established throughout the Nation. Generally, however, they have applied on a limited number of commodities and require the mixing of two or more commodities. The primary purpose was and is to move less-than-carload traffic in carload quantities at a savings to both the carriers and the shippers. All-commodity rates in mixed carloads have usually reflected the average carload rate basis for the commodities covered, thereby adhering to, rather than departing from, classification principles by classifying a mixture of freight in carload quantities.

Discussion and conclusions.—As stated, the proposed rates apply on straight as well as mixed shipments, and on a vast number of commodities. The New Haven relies heavily on *All Freight to Pacific Coast*, 248 I.C.C. 73, wherein it was held that all-commodity rates on straight or mixed shipments did not violate section 1(6). However, in that proceeding, the all-commodity rates were no lower than the carload commodity rates which otherwise

would have applied. In a few other proceedings we have approved all-commodity rates which were not limited to mixed shipments, but there again the all-commodity rates were at the same level as, or higher than, the carload commodity rates.⁵ It is thus clear that approval of all-commodity rates in those proceedings did not represent approval of departures from the "classification" required by section 1(6) of the act. On the other hand, the application of all-commodity rates on shipments of single high-grade commodities was condemned in *Merchandise to and from Chicago*, 66 M.C.C. 287, and in *Freight, All Kinds, Kansas City, Mo.-Kans., to Nebraska*, 310 I.C.C. 321.

The maintenance of class rates is quite different from the "classification of property" required by section 1(6). While it was never intended that class rates must be applied on all traffic, the plain language of section 1(6) requires the maintenance of a classification of property with the establishment of rates related thereto. Exceptions rates and commodity rates do not represent departures from the classification of property because such rates are established on specific commodities or groups of commodities to meet particular transportation conditions. This is true also of classification rule 10 for mixed shipments, or variations thereof, moving at single rates and minimum weights, to which all-freight and all-commodity rates are closely akin. While such rates ignore to some extent the individual commodity classifications, they are a necessary and established part of the national rate structure, and thus may appropriately be regarded as a reasonable separate category of classification, provided always that such rates are so restricted as not to undermine seriously any just and reasonable rate adjustment.

⁵ See also, *All Freight from Butte, Mont., to Spokane, Wash.*, 251 I.C.C. 291, and *All Freight from Chicago and St. Louis to Birmingham*, 226 I.C.C. 455.

The rates here under investigation, however, apply not only on mixed but also on straight shipments of numerous commodities which would otherwise be subject to higher rates. Thousands of commodities are included in this sweeping adjustment without relation to classification principles, and without regard to the destructive effect which the proposed rates would have upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. If not restricted to reasonable mixtures, such rates could, and no doubt would, break down these rate structures to the detriment of carriers and shippers alike. The evidence is clear that such result would follow approval of the proposed rates. In these circumstances, the rates must be condemned as constituting a destructive competitive practice in contravention of the national transportation policy, and also as in violation of section 1(6) of the act.

For purposes of clarification, we wish to emphasize that just and reasonable classifications for commodity rates may bear little, if any, resemblance to the classifications observed in orthodox class-rate adjustments, for the reason that commodity rates usually reflect material transportation circumstances and conditions, especially market and carrier competition, which are not reflected in class-rate structures. We have in mind the necessity for variations in commodity-rate levels depending upon the character of the traffic and the circumstances affecting the transportation in particular situations.

Convincing proof that congressional policy requires just and reasonable classifications of freight for all ratemaking purposes—not just class rates—will be found in the Hoch-Smith Resolution, 49 U.S.C. 55, (adopted January 30, 1925, and still in effect) and in the analysis of that resolution by the Supreme Court in *Ann Arbor R. Co. v. United States*, 281 U.S. 658. The second paragraph of that resolution directed the Commission to investigate the

rate structure to determine the extent and manner that existing rates and charges imposed undue burdens or gave undue advantage as between, among other things, "the various classes of traffic, and the various classes and kinds of commodities * * *." In commenting on that paragraph of the resolution, the Court referred to the substantive provisions therein which required consideration of (a) the general and comparative levels in market value "of the various classes and kinds of commodities" as indicated over a reasonable period of years, (b) a natural and proper development of the country as a whole, and (c) the maintenance of an adequate system of transportation. These matters, the Court emphasized, "have all been regarded as factors requiring consideration under existing laws." The basic statutory standards of lawfulness are substantially the same today. Just and reasonable classifications of freight are also clearly contemplated by section 3(1), which prohibits undue preference or advantage to "any particular description of traffic, in any respect whatsoever."

It is true, of course, in carrier competitive situations, that a particular carrier or mode of carriage should not be required to forego traffic by observing classification principles that are ignored by its competitors, when the rate situation otherwise conforms to statutory ratemaking standards. It is equally true that proprietary and exempt carriage presents a special problem in this area of rate-making.

The present statutory ratemaking standards in the act, particularly section 15a(3), are flexible enough to enable all regulated carriers and modes to maintain competitive rate adjustments, including the special situations resulting from proprietary and exempt carriage, provided such adjustments do not run counter to any of the basic standards of lawfulness in the act. The Commission's recognition of this clearly appears from its past decisions, and currently. By basic standards of lawfulness we mean the

standards of lawfulness in the act designed to protect the public interest in ratemaking, including especially those provisions which, since the inception of economic regulation, have required fair, just, and reasonable freight rates (for both carriers and shippers), and equality of treatment for people, commodities, and places, under substantially similar circumstances and conditions.

For the reasons stated earlier in this report, the competitive conditions confronting the respondents herein do not justify a finding that these all-freight rates in the form here proposed are just and reasonable. The hard problems presented by carrier competitive situations do not warrant the scuttling, or serious impairment, of the main rate-making standards of the Interstate Commerce Act. The approval of this present proposal as lawful, bearing in mind its full implications, would in our judgment be a significant move in that direction.

This Commission, of course, has no authority to modify, enact, or nullify the Nation's transport laws. If all classifications must be disregarded with respect to all commodity and exceptions rates which move the great bulk of the Nation's commerce transported by regulated carriage, then Congress is the body that should be consulted in the matter.

Upon reconsideration, we find that the rates under investigation in these proceedings are unjust and unreasonable. An order will be entered requiring their cancellation and discontinuing the proceedings.

COMMISSIONER MCPHERSON, dissenting:

I would affirm the findings in the prior report.

COMMISSIONER WEBB, whom COMMISSIONER TUCKER joins, dissenting:

This report is a retrogressive step in the history of rate regulation. Twenty years ago the Commission decided

that all-commodity rates, not essentially different from those involved in these proceedings, did not violate section 1(6) of the Interstate Commerce Act. *All Freight to Pacific Coast*, 248 I.C.C. 73.⁶ At no time during the intervening period has the validity of that precedent been questioned by the Commission.⁷

The report of the Commission in *All Freight to Pacific Coast*, *supra*, was written by Commissioner Aitchison. His opinion ~~for~~ the majority, the concurring expression of Commissioner Eastman, and the dissenting expressions of Commissioners Porter, Johnson, and Alldredge (with whom Commissioner Rogers joined) constitute an analysis of the basic problem which, in terms of penetration, lucidity, and forthright expression, is not likely to be surpassed. Although no such analysis is attempted in the report in these proceedings, it is clear that the majority has adopted the position unsuccessfully urged 20 years ago by Commissioner Alldredge.

The majority is correct in observing that the primary issue in these proceedings is the alleged violation of section 1(6) of the act. At the outset, some striking similarities between the rates proposed here and those considered in *All Freight to Pacific Coast*, *supra*, deserve mention. There, as here, the all-commodity rates were clearly compensatory. There, as here, the all-commodity rates were designed to halt the diversion of rail traffic by rail-truck, motor common carrier, and private transportation. There, as here, the all-commodity rates were not subject to a mix-

⁶ On appeal, the Commission's decision was affirmed. *Pacific Inland Tariff Bureau v. United States*, 50 F. Supp. 376 (W.D. Wash., 1943).

⁷ The two cases relied upon by the majority to support its conclusion, *Merchandise to and from Chicago*, 66 M.C.C. 287, and *Freight, All Kinds, Kansas City, Mo.-Kans., to Nebraska*, 310 I.C.C. 321, do not discuss section 1(6), its counterpart, section 216(b), or *All Freight to Pacific Coast*, *supra*.

ing rule; applied only on shipments in one direction; did not apply on various commodities; and resulted in the movement of a large volume of freight which had moved on specific commodity rates lower than the class rates. And there, as here, the all-commodity rates were found to have produced an increase in volume of traffic which was largely offset by the lower all-commodity rate level. However, the majority does not find that the proposed rates would harm the New Haven's competitors without benefiting the carrier, probably because there is no indication that the traffic actually moved under the proposed rates would have moved under the rates which would be superseded. The majority's finding with respect to destructive competition appears to be based solely upon its conclusion that the proposed rates would break down just and reasonable rate structures because of their departure from classification principles.

The only ground upon which the majority attempts to distinguish *All Freight to Pacific Coast*, *supra*, is that the all-commodity rates in that proceeding were no lower than the carload commodity rates which would otherwise have applied. So far as section 1(6) is concerned, that is a distinction without a difference. The respondents' carload commodity rates are just as foreign to the "classification" required by section 1(6) as their all-commodity rates.

The core of the majority's report is found in the following paragraph:

The maintenance of class rates is quite different from the "classification of property" required by section 1(6). While it was never intended that class rates must be applied on all traffic, the plain language of section 1(6) requires the maintenance of a classification of property with the establishment of rates related thereto. Exception rates and commodity rates do not represent departures from the classification of property because such rates are established on specific

commodities or groups of commodities to meet particular transportation conditions. This is true also of classification rule 10 for mixed shipments, or variations thereof, moving at single rates and minimum weights, to which all-freight and all-commodity rates are closely akin. While such rates ignore to some extent the individual commodity classifications, they are a necessary and established part of the national rate structure, and thus may appropriately be regarded as a reasonable separate category of classification, provided always that such rates are so restricted as not to undermine seriously any just and reasonable rate adjustment.

What this means is that the classification requirement of section 1(6) of the act applies not merely to class rates but to all rates—exceptions rates, commodity rates, classification rule 10 mixed shipments, and all-freight and all-commodity rates. The same broad interpretation of “classification” as used in section 1(6), was advanced by Commissioner Alldredge in his dissenting expression in *All Freight to Pacific Coast*, *supra*, at page 101:

The significance of classification should be considered in its broadest sense, that is, as furnishing a comprehensive system for the distribution of the general rate burden and the establishment of rate relations, and, so regarded, it necessarily embraces commodity rates as well as so-called class rates.

These conclusions cannot be reconciled with those of the Commission in *All Freight to Pacific Coast*, *supra*. Speaking for the majority in that proceeding, Commissioner Aitchison observed at page 87:

The public is primarily interested in the charge for the service, irrespective of whether a rate is stated as a class or commodity rate. All rates are required to be just and reasonable, nondiscriminatory and non-

prejudicial. To require carriers to maintain rates only on a classification basis would make section 1(6) paramount to all other sections of the act, particularly section 1(5), which requires all rates to be just and reasonable. . . .

The majority concedes that just and reasonable classifications for commodity rates may bear little, if any, resemblance to the classifications observed in orthodox class-rate adjustments. Assuming, *arguendo*, that commodity rates and all-commodity rates constitute a "separate category of classification" within the meaning of section 1(6), it is obvious that the so-called classifications do not resemble the classifications which govern the application of class rates. All-commodity rates, for example, are made without regard to the value of the individual articles transported and without regard to the classification ratings of the individual commodities. It is even more difficult to view a commodity rate on shoes from point A to point B as a "separate category of classification" within the purview of section 1(6). But even when commodity rates involve some grouping of commodities, such a grouping is different in kind from the classification envisioned by section 1(6).

Apparently, the common denominator underlying the majority's all-inclusive interpretation of "classification" is a requirement that all rates must reflect, or at least must not offend, the value-of-service theory of ratemaking. The rationale of the report is the same as that expressed in the above-quoted statement of Commissioner Alldredge.

The majority's conclusion that all rates are governed by the classification requirement of section 1(6) is contrary to the fundamental principles of ratemaking which this Commission has recognized during the last 20 years. For example, Commissioner Eastman in *All Freight to Pacific Coast*, *supra*, at page 89, made the following observations

which he described as "elementary" and which he said "will enlighten no student of transportation charges":

I think that the extent to which the weight given to value has made possible the publication of low rates for low-grade freight has been exaggerated, for often these low rates, by reason of low cost of service, are very remunerative. However, there is no doubt that it has made the rates on many commodities considerably higher than cost of service alone could have justified. And this is a fact which has nourished the competition which the railroads have encountered as motor transportation has developed. Such competition has in recent years brought about wholesale reductions in railroad rates which had been elevated in the past by the weight given to the element of value.

What Commissioner Eastman regards as elementary when the winds of competition were rising is even more elementary today when those winds have reached hurricane force. The legislative and historical background of section 1(6) leaves no doubt that the requirement of classification was intended to reinforce the Commission's power to establish maximum reasonable rates but not to prohibit or restrain competitively compelled departures from the classification.

Even before the enactment in 1887 of the Act to Regulate Commerce, the railroads maintained classifications of property. Even then the ratings were based primarily on the value of the service. Not until the enactment of the Mann-Elkins Act of June 18, 1910, however, were the carriers expressly required to make or observe a classification of property. Although the Commission, prior to 1910, had no specific authority to prescribe classifications of property, the power was exercised from the beginning of regulation because it was deemed essential to the effective exercise of its specific powers over rates. The nature of the implied power asserted by the Commission was described as fol-

lows on page 31 of its First Annual Report to the Congress:

It was, therefore, seen not to be unjust to apportion the whole cost of service among all the articles transported, upon a basis that should consider the relative value of the service more than the relative cost of carriage. Such method of apportionment would be best for the country, because it would enlarge commerce and extend communication; it would be best for the railroads, because it would build up a large business, and it would not be unjust to property owners, who would thus be made to pay in some proportion to benefit received. Such a system of rate-making would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it.

In its Eighth Annual Report to the Congress, the Commission observed that "classification is the foundation of rate-making." By "classification" the Commission meant that rates should reflect to a large extent the value of the article transported; that is, that rates should be adjusted on principles analogous to those on which taxes are assessed. Despite the reservations later expressed concerning this method of ratemaking, there is no doubt that it was a practical method so long as the railroads held a virtual monopoly on transportation services.

It is clear that when the Congress enacted section 1(6) in 1910, it merely confirmed a power which the Commission had asserted under the Act to Regulate Commerce of 1887. The legislative history of section 1(6) shows that the express statutory requirement of a just and reasonable classification was intended to supplement the Commission's power to prevent excessive transportation charges. For example, the remarks of Representative Russell on H.R. 17536 were reported as follows:

Another very beneficial provision of the law is one providing that the railway companies shall establish and enforce just and reasonable regulations concerning the rates and tariffs.

I am not familiar with railway practices or rate sheets, or things of that kind, but I was told by a member of this House who has familiarity with them, a few days ago, that the shipper can be extorted from; he can be made to pay an unjust rate just as well through classification as he can through the fixing of a rate. The carriers can put an article in one classification, subject to a given rate, and if the I.C.C. sees fit to declare that rate unreasonable, and reduce it, declaring what shall be a reasonable rate to take its place, the carrying corporation can obtain the same benefit and put the shipper under the same disadvantage by simply changing the classification of the article.⁸

The Congress recognized, therefore, that the classification serves as a basis for the establishment of maximum reasonable rates and that value of service, in the sense used by the Commission prior to 1910, was the foremost consideration in establishing classification rates and ratings. For some years after 1910, the railroad monopoly was such that it was still possible for railroads to transport a substantial volume of freight on classification rates. And so long as railroads enjoyed even a semimonopolistic position, the classification required by section 1(6) could be regarded as the foundation of ratemaking. The change was gradual. By 1939, however, transportation conditions had changed so materially that the Commission observed at pages 26 and 27 of its 53d Annual Report:

The fact that in many instances railroad freight rates have been considerably higher than cost of service would justify has obviously afforded better opportunities for competition than would otherwise have existed,

⁸ 45 Cong. Rec. 5142 (1910).

and the trucks and water lines have not been slow in availing themselves of these opportunities.

.

It will be seen that the competition of today has been and is cutting the props from under the old railroad rate structure and the principles, if such they can be called, upon which it was based. The trucks have been eating into the remunerative short-haul traffic and into the highly profitable carload traffic in high-grade commodities which load well, and the water carriers and the pipelines have been taking their toll of much long-haul traffic. * * * Because of the competitive reductions, the railroad rate structure has come to be full of apparent distortions and inconsistencies, and has grown more complex.

In Docket No. 28300, *Class Rate Investigation, 1939*, 262 I.C.C. 447, the Commission found that only 5.8 percent of the carload traffic moved on class rates within official territory. In my judgment, the statutory requirement for just and reasonable classification is satisfied even though only a small portion of the total traffic moves on such rates. In other words, the requirements of section 1(6) are satisfied if a carrier maintains a classification as a compendium of maximum reasonable rates. The decision of the Supreme Court in *Ann Arbor R. Co. v. United States*, 281 U.S. 658 (1930), does not require a contrary conclusion. In the first place, that case arose during the transition from value-of-service pricing to cost-oriented methods of pricing. Secondly, the Commission's view that the Hoch-Smith Resolution was a rule intended to control ratemaking was repudiated by the Court. As a result, the *Ann Arbor* decision was widely regarded as virtually a nullification of the resolution. See Locklin, *Economics of Transportation*, 240 (5th ed. 1960).

The Commission did not hold in *All Freight to Pacific Coast*, *supra*, that section 1(6) is legally extinct. Only the

Congress is empowered to modify or repeal provisions of the act. On the contrary, at the very beginning of the discussion and conclusions in *All Freight to Pacific Coast*, *supra*, at page 86, Commissioner Aitchison pointed out:

Respondents now maintain a full line of class rates governed by the western classification from and to all of the points involved in this proceeding, as required by section 1(6) of the Interstate Commerce Act.

Recently, in Docket No. 32533, *Eastern Central M. Carriers Assn. v. Baltimore & O. R. Co.*, 314 I.C.C. 5, 49, the Commission found: "The railroads maintain a uniform classification of property, and consistent with the conclusions previously cited,⁹ we find that the assailed rates and charges do not constitute a failure to provide a just and reasonable classification under section 1(6) of the act." It cannot be denied that the respondents in these proceedings maintain a complete and uniform classification of property and a full line of class rates.

Since the majority's conclusion is basically indistinguishable from that reached by Commissioner Alldredge in *All Freight to Pacific Coast*, *supra*, it may be helpful to analyze his dissenting expression in the light of subsequent events.¹⁰ Commissioner Alldredge's fundamental objection

⁹ *All Freight to Pacific Coast*, *supra*, and *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623, 631.

¹⁰ Commissioner Alldredge's antipathy toward all-commodity rates is shown in his dissenting expressions in *All Freight Between Harlem River, N.Y., and Boston*, 234 I.C.C. 673; *All Freight, Chicago and St. Louis to Santa Rosa, N. Mex.*, 243 I.C.C. 517, and *All Freight Between Los Angeles and Albuquerque*, 28 M.C.C. 161. Of particular interest is the report of division 3 in which Commissioner Johnson, joined by Commissioner Alldredge, stated the case against all-commodity rates with great clarity and vigor. *All Freight from Eastern Ports to the South*, 245 I.C.C. 207. Upon reconsideration, however, following *All Freight to Pacific Coast*, *supra*, the case was disposed of on other grounds. 251 I.C.C. 361.

to all-commodity rates was that they violated the value-of-service theory of ratemaking which, in his opinion, the Commission was bound to respect both for economic reasons and in compliance with the intent of the Congress. Commissioner Alldredge's objections to all-commodity rates may best be summarized in his own words in *All Freight to Pacific Coast, supra*, at page 102:

Basic objections, therefore, to all-commodity rates are:

• • • • •

3. Though such rates may have only a special and limited use, they must nevertheless be incorporated into a *general rate structure constructed upon classification principles*, thus creating incongruities, maladjustments, and a general lack of harmony that inevitably must lead to violations of the antidiscrimination provisions of the law. [Emphasis added.]

4. The general use of rates of this character, if it should be brought about, may be expected to have a disastrous effect upon the revenue of all transportation agencies. The application of one level of rates to all commodities without distinction as to value or other transportation characteristics is bound to reduce revenues by discouraging, hampering, and restricting the movement of the lower-grade commodities, and by sacrificing unnecessarily revenue on high-grade commodities. To reiterate, it is rudimentary that some articles, by their very nature, will stand a higher transportation charge than others. • • •

Today, the traditional concept of value-of-service pricing should not be regarded as an important factor in making rates. A distribution of the transportation burden among articles of commerce according to their value was reasonable in an era of monopoly but to require any such distribution today, except within very narrow limits, is unreal-

istic. Reduction of rates to meet widespread competition compels departure from ancient value-of-service principles. To conclude otherwise is to attribute to the Congress an intent to require the maintenance of classifications that would defeat the needs of commerce. Section 1(6) was intended to protect shippers from abuses arising from a lack of competition. Rates and ratings based on the classification may still be essential in fixing a ceiling on transportation charges, but where strong competition exists, other rates not based on the classification and not reflecting the value-of-service theory are essential to move the traffic involved. Motor common carriers are also aware of these economic facts of life. An examination of tariffs on file with the Commission will show that motor carriers are making extensive use of all-commodity rates not essentially different from those involved in these proceedings.

In recent months the Commission has warned the Congress and the general public concerning the decline of common carriage and the tremendous increase in the volume of traffic moving in unregulated channels of commerce. Appropriate legislative remedies have been suggested. A major element in the threat to common carriage is that the proprietary carrier is completely unaffected by classification principles. Value of service, as viewed by many shippers, is merely the value of common carrier service when compared with the cost of private transportation with whatever allowance is appropriate for differences in quality of service. Any program to cure the ailments of common carriers, coupled with a policy to tie rates to antiquated value-of-service theories, holds a promise to the ear which will be broken to the hope.

Two propositions form the cornerstone of Commissioner Alldredge's dissenting expression in *All Freight to Pacific Coast, supra*. The first is that "a general rate structure constructed upon classification principles" actually exists, and the second is that such a structure must be preserved in the interest of preventing violations of the antidiscrimi-

nation provisions of the act. The first proposition is less true today than it was 20 years ago while the second is just as invalid today as it was then. In the instant proceedings, the majority, in my opinion, has endorsed both propositions, as evidenced by the emphasis placed upon the necessity of preserving what is described as a just and reasonable national rate structure.

Generalizations regarding a matter so complex as the overall transportation rate structure are apt to be dangerous oversimplifications. Rate structures, so-called, are being shaped and reshaped to a progressively increasing extent by the impersonal forces of competition and to a progressively decreasing extent by the personal judgment of commissioners. To the extent that our national rate structure, so-called, has been molded by fair competition, I am satisfied that it is just and reasonable. This conclusion is based on my conviction that the impersonal judgment of the transportation marketplace can be relied upon to produce a national rate structure, so-called, that is far more just and reasonable than any product of economic planning.

Nevertheless, there is a factor which imparts rigidity to the national rate structure and that is the extent to which the structure is based on classification principles with value of service as the dominant element. To the extent that our national rate structure is constructed upon value-of-service considerations (except for the purpose of establishing maximum reasonable rates), it is, in my opinion, inherently unjust and unreasonable. Value-of-service pricing in transportation was initiated by railroad monopolists for the purpose of maximizing profits by discriminating against shippers of manufactured products. This system of price discrimination was accepted by the Commission in the early years of regulation because it furthered the Nation's general economic policy for developing the continent. In effect, shippers of high-valued commodities along the eastern seaboard were compelled to finance the extension of rail-

lines into the hinterland and thereafter to subsidize the less prosperous shippers who settled there. See Meyer, Peck, Stenason, Zwick, *The Economics of Competition in the Transportation Industries*, 179 (1958). Needless to say, the historical purpose of value-of-service rates was fulfilled many years ago.

In *New York, N. H. & H. R. Co. v. United States*, — F. Supp. —, civil action No. 8679 (D. Conn., Nov. 15, 1961), the court recognized that value-of-service ratemaking is “a price-discrimination device, used either to maximize profit or to subsidize certain interests.” Nevertheless, the court also recognized in its discussion of value-of-service rates that “these official discriminations, hallowed and en-crusted by time and inertia, now pervade the rate structure; indeed they are the rate structure.” The question here is whether such a rate structure has become so rooted in commerce law that its reformation requires action by the Congress.

A good argument can always be made for the proposition that the settled policies of the Interstate Commerce Commission, whether the result of action or inertia, should be altered only by the Congress. The better view, in my opinion, is that the Congress, in delegating authority couched in such broad terms as “just and reasonable,” intended the Commission to adjust its regulation in the light of changes in the industry and, whenever deemed necessary, to scuttle outmoded theories and practices without regard to their antiquity. Whatever policy is followed by the Commission, the Congress will decide whether the Commission was right or wrong in acting or in failing to act. The one great advantage, it seems to me, in an activist approach to transportation problems is that regulatory inertia and legislative lag are far more damaging in the long run than decisive regulatory action, granting, of course, that the action may not always be wise.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 719

ALL STATES FREIGHT, INC., ET AL., APPELLANTS

v.

**THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY (RICHARD JOYCE SMITH, WILLIAM J.
KIRK, AND HENRY W. DORIGAN, TRUSTEES), ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT**

MEMORANDUM FOR THE INTERSTATE COMMERCE COMMISSION AND THE UNITED STATES

This case presents an appeal by defendants in intervention from a final judgment of the United States District Court for the District of Connecticut annulling an order of the Interstate Commerce Commission which required the cancellation of certain all-commodity rail rates for mixed or straight carload shipments from New England to certain points in the Middle West.

The Commission believes that the district court's decision was based on an erroneous interpretation of Section 1(6) of the Interstate Commerce Act and

of the National Transportation Policy. However, the Commission entertained some doubt as to the adequacy of its findings in relation to matters relied upon by the district court and therefore, rather than note an appeal to this Court, it voted to reopen the proceedings for further consideration and hearing. The United States likewise thought an appeal inappropriate in the circumstances.

This memorandum is submitted to advise the Court of the reasons the Commission and the United States did not appeal and of the fact that by an order dated November 13, 1963, the Commission has reopened the proceedings.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

ROBERT W. GINNANE,
General Counsel,
Interstate Commerce Commission.

JANUARY 1964.

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IN THE

Supreme Court of the United States

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FILED

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JOHN F. DAVIS, CLERK

October Term, 1964

No. ~~22~~ 22

ALL STATES FREIGHT, INC., ET AL.,

Appellants,

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAIL-
ROAD COMPANY (RICHARD JOYCE SMITH, WIL-
LIAM J. KIRK, and HARRY W. DORIGAN, Trustees),
ET AL.

On Appeal From the United States District Court for the
District of Connecticut.

MOTION TO AFFIRM.

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Of Counsel for Appellees.

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1963.

No. 719.

ALL STATES FREIGHT, INC., ET AL.,
Appellants

v.

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY (RICHARD JOYCE SMITH,
WILLIAM J. KIRK, AND HARRY W. DORIGAN,
TRUSTEES), ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT.

MOTION TO AFFIRM.

Appellees, pursuant to Rule 16 of the Revised Rules of this Court, move that the final judgment of the District Court be affirmed on the ground that the questions presented are so unsubstantial as not to warrant further argument.

STATEMENT.

This is a direct appeal from the final judgment entered on September 16, 1963, by a District Court of three judges specially constituted pursuant to 28 U. S. C. §§ 2284 and 2325. In that judgment, the court below, in accordance with its opinion in *The New York, N. H. & H. R. R. Trustees v. United States*, 221 F. Supp. 370 (D. C. Conn. 1963)¹ set aside a report and order of the Interstate Commerce Commission and enjoined the enforcement thereof.

The opinion of the District Court sets forth the nature of the freight rates involved in the investigation before the Commission and notes that the rates have been in full force and effect since July 16, 1959, after reversal by the Commission of its initial order to suspend the schedules, under Section 17(8) of the Interstate Commerce Act, pending investigation.²

As the Court noted, the New York, New Haven and Hartford Railroad Company, initiated the rates in issue because it was faced with the loss of traffic to highway carriage and the newly established trailer-on-flatcar service of other railroads (which latter service the New Haven was not in a position to handle extensively because of equipment and clearance difficulties) and because it was plagued with a large number of empty boxcars moving west, primarily because of intense competition from unregulated carriers.

In the face of declining revenues, and recognizing the need to cope with drastic changes on the part of its rail and truck competitors with regard to both technology and pricing, the New Haven took the only feasible course open to it, i.e., to revise its pricing as to articles of freight most susceptible to diversion from it to other transporta-

1. Printed in full in Appellants' Jurisdictional Statement as Appendix A. All page references in this motion are to the Jurisdictional Statement.

2. 49 U. S. C. § 17(8).

tion services, such as the trailer-on-flatcar service of competing railroads, which it had no funds to provide on a fully competitive scale.

Thus, it initiated pricing for specified service in boxcars which would achieve the objective not only of inducing shippers to use the New Haven's service, but to encourage particularly those served by rail sidings to use boxcar service having excess capacity (because of the empty return movement westbound), thus increasing revenues at negligible additional cost. The incentive rates, which diminish on the 100-pound basis with the increase in total weight shipped in one car, are those involved in this appeal (17a). Similar rate schedules were filed by competing railroads serving New England and connecting carriers gave their concurrences.

These rates were initially suspended by the Commission and made the subject of an investigation at the request of Eastern Central, an Appellant herein, and another motor carrier association which took no further part in the proceedings. As stated previously, the suspension order was vacated upon the petition of Appellees and certain supporting shippers. No shipper opposed the rates; only the New Haven's truck competitors.

The rates not only cover out-of-pocket costs but, as found by Division 2 in the original report, they "more than cover fully-distributed costs" (*All Commodities from New England to Chicago and St. Louis*, 313 I. C. C. 275, 280). This means that the rates not only cover the direct cost of performing the service to which they apply, but also cover overhead costs allocable thereto, including an element for return on investment and a contribution to the passenger deficit and less-than-carload deficit of the New Haven. The report of the entire Commission took no issue with this finding and, in substance, affirmed it (19a). Thus the Commission found no difficulty from the standpoint of the rates being compensatory. And it likewise did not question that the purpose of the rates was to regain traffic and

halt diversion of traffic to rail-truck (trailer-on-flatcar), motor common carrier and private transportation and to utilize cars which would otherwise return empty westbound, the only direction in which the rates applied. There was no criticism of the application of the rates respecting description of freight, equipment used, or direction of traffic flow. There was no finding that motor carriers were the low-cost carriers, nor could there have been such a finding since there was no evidence of the cost of transportation by motor carrier.

The majority did find that the rates constitute a destructive competitive practice in contravention of the National Transportation Policy,³ and that they violate the provision of Section 1(6),⁴ which requires reasonable classifications of property.

The court below found that Section 1(6) of the Act was intended to give the Commission power to protect shippers by controlling the maximum charges for transportation of their freight, that the Commission has so interpreted it for many years (9a), and that it has no application in this case (10a). It found further that there is no evidence to support a finding of destructive competition (13a).

Thus, the Court said that the Commission, having no evidentiary basis to condemn the rates under sections of the Act governing competitive rate reductions, could not do so under a section intended to govern maximum reasonable rates for the protection of shippers.

Although the motor carrier association and certain of its members, intervenors below, filed a notice of appeal herein on or about November 2, 1963, neither the United States nor the Interstate Commerce Commission did so.

3. 49 U. S. C. preceding §§ 1, 301, 901, 1001.

4. 49 U. S. C. § 1(6). "It is hereby made the duty of all common carriers subject to . . . this part to establish, observe and enforce just and reasonable classifications of property for transportation, with reference to which rates . . . may be made . . ."

Instead, the latter filed a joint memorandum advising the Court that the Commission believes the District Court's decision to be based upon an erroneous interpretation of Section 1(6) and of the National Transportation Policy. But it nevertheless refused to appeal because it entertains doubt as to adequacy of its findings in relation to matters relied on by the District Court. In this state of self-doubt, the Commission voted to reopen the proceedings.

It thus appears that the Commission now wishes to have nullified the decision of the District Court by imputing its own inadequate findings to the Court. Reopening the case before the Commission will have no effect on the unlawful application of Section 1(6) by the Commission. The motor carrier Appellants who presented the sole evidence before the Commission in opposition to the rates are apparently satisfied with the state of the record before the Commission.

In any event, it seems entirely clear that the action of the Commission does not eliminate the controversy as between the parties here. The memorandum of the Commission implies that it intends to follow the reopened hearing with a new report containing the same conclusion respecting Section 1(6). Thus, the issues herein are not moot under *Southern P. Terminal Co. v. Interstate Commerce Com.*, 219 U. S. 498, 55 L. ed. 310, 31 S. Ct. 272 (1911).

ARGUMENT IN SUPPORT OF THE MOTION.

That the questions presented are not substantial, may readily be demonstrated by analysis of the Appellants' argument in support of the proposition that they are substantial. (This analysis will also show that the statement of the questions presented on pages 5 and 6 of the Jurisdictional Statement are not correct statements.)

The first reason assigned by Appellants in support of their argument that the questions are substantial is that the District Court's decision lays down "a new interpretation of the Interstate Commerce Act, said by the Court to be made necessary by reason of changed economic circumstances and past legislative modification through administrative decisions" (9). This is not correct. As the District Court's opinion shows (9a), the just and reasonable classification requirement of § 1(6) was adopted in 1910 to give the Commission control over classification (the classification of property used in connection with class rates), and "its purpose was to protect shippers by controlling the maximum charges for transportation of commodities." The Court also said "The practice of the Commission over the past 21 years, as pointed out by Commissioner Webb in his dissent in the instant case, was consistent with this interpretation." After citing certain cases, the Court said "We can see no difference in principle between those cases and the one before us and no sound reason for so interpreting § 1(6) as to prohibit such competitively compelled departures from classifications, within the established maxima, absent some other violation of the Act than the mere departure from the classification" (9a-10a).

Having thus established what the consistent interpretation of the classification requirement of § 1(6) was over the years, the Court referred to the Commission's present fears that approval of the rates in question "would be legislation on its part". Then the Court observed that since

the vast preponderance of traffic already moves at rates below the class rates; it would seem that the Commission has already effectively "legislated or interpreted" the modification of "*what it now claims* was the original meaning and purpose of § 1(6)". (Italics supplied.) It was with reference to what the Commission "now claims" to be the original meaning and purpose of § 1(6) that the Court addressed these remarks and the next sentence that it is strange to find it boggling at the final step of so little effect on traffic moving under class rates. This latter is purely a factual situation. The Court is saying, in effect, that since practically all traffic now moves on commodity rates, it is strange to find the Commission, which permitted this, suddenly to urge that approval of rates such as those involved would be a blow to classification. Then the Court said (10a and 11a), that

"In any case, we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15a(3). The record discloses no violation of these sections."

Instead, therefore, of laying down "a new interpretation of the Interstate Commerce Act", as charged by Appellants, the Court simply held to the consistent interpretation given § 1(6) over the years.

The foregoing discussion is sufficient also to show that the Appellants are incorrect in the second reason assigned by them for a conclusion that the questions are substantial, namely, that the decision below holds that the meaning of the Interstate Commerce Act should be modified to meet the economic circumstances existing at the time of decision. It is plain that the Court adhered to the interpretation consistently given to the classification provision of § 1(6) since its enactment.

The third reason given by Appellants in their argument that the questions are substantial is that the lower

Court ignored a "finding" by the entire Commission that during a certain period the New Haven transported more than 4 million pounds of additional traffic at the rates involved in return for only \$129.00 of additional gross revenue. Then Appellants state that "In the face of that factual finding, the Court below overturned the Commission's conclusion that the rates constitute a destructive competitive practice" (p. 9). This is hardly the sort of matter that merits the attention of this Court. Moreover, the statement cited does not appear to have been given any weight by the Commission. It is not even mentioned in that part of the report in which the Commission purports to state the reasons for its conclusions, the part entitled "Discussion and conclusions" (20a). It is not difficult to see why the Commission did not attach to this statement the significance which the Appellants would have the Court attach to it. The object of the New Haven in publishing the rates was not only to attract additional traffic—welcome though that would be—but also to retain what they had against the mounting pressures of competition. The Commission found that "Within 2 months after the establishment of the plan III [trailer-on-flatcar] service on July 21, 1958, the New Haven lost the equivalent of over 400 boxcar loads of this traffic to the New York Central" (17a). It may be noted also that in discussing the figures cited by Appellants and other like figures, the Commission stated what the revenue effect would have been on traffic formerly moved by the New Haven at the old rates, "had it continued to" move by the New Haven at such rates (18a). Along the same lines, Commissioner Webb pointed out, in his dissenting opinion (26a):

"... the majority does not find that the proposed rates would harm the New Haven's competitors without benefiting the carrier, probably because there is no indication that the traffic actually moved under the proposed rates would have moved under the rates which would be superseded."

Not only was there no way of determining the volume of traffic which would have moved in the absence of the new rates, but there was also no indication of what the average weight of the lading per car would have been. Thus, the relative cost of transportation under the prior rates is unknown and the relative benefits in the form of net revenues accruing to the carrier is likewise unknown.

That there was nothing in the Court's treatment of the Commission's finding based upon the "destructive competitive practice" theory which warrants the attention of this Court is clear from the lower court's conclusion with respect to this point (12a to 13a):

"The finding that the rates will be destructive of competition rests on a basis not entirely clear to us. It would appear rather that they would enable the railroads 'to respond to competition by asserting whatever inherent advantages of cost and service they possessed.' The rates are admittedly compensatory, exceeding the out-of-pocket costs and in most instances making a substantial contribution to overhead. There is no finding based on evidence that the rates would destroy or impair the inherent advantages of other modes of transportation. The finding of destructive competition is not adequately supported on the present record."

This is quite an ordinary conclusion which presents no substantial question for this Court. Moreover, it is in harmony with this Court's decision in *I. C. C. v. New York, New Haven & Hartford R. Co.*, 372 U. S. 744 (1963) and with the following decisions of three-judge District Courts: *Missouri Pacific R. R. Co. v. U. S.*, 203 Fed. Sup. 269 (1962) (E. D., Mo.); *Pennsylvania R. R. Co. v. U. S.*, 202 Fed. Sup. 584 (1962) (E. D., Pa.); *St. Louis-San Francisco R. R. Co. v. U. S.*, 207 Fed. Sup. 293 (1962) (E. D., Mo.).

Appellants' contention that the Court's references to the value of service principle are contrary to the necessary

implications of this Court's decision in *Baltimore & Ohio Railroad Co. v. U. S.*, 345 U. S. 146 (1953) is also without merit. The District Court referred to this matter (11a) simply as appearing to afford an explanation for the Commission's having invoked § 1(6), which the Court had previously found (10a) not to have been violated. In its statements concerning the value of service principle and the National Transportation Policy (which latter, it said, was "intended to permit the railroads, no longer effective monopolies, to respond to competition by asserting whatever inherent advantages of cost and service they possessed") the Court was simply pointing out the obvious fact that rates cannot be held at levels based upon notions of value of service. (high value of commodity = high rate) in a non-monopolistic transportation environment wherein competitors, both regulated and unregulated, elect to assess rates on a much lower level. This does not prevent a carrier from charging higher rates, when it can successfully do so, in order to offset lower rates on such articles as the fruits and vegetables involved in *Baltimore & Ohio Railroad Co. v. U. S.*, *supra*, which was, moreover, a case involving maximum reasonableness and not minimum rates as here involved.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the decision below is correct and that this appeal presents no substantial questions. The judgment of the District Court should be affirmed.

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Of Counsel for Appellees.

Due: February 26, 1964.

PROOF OF SERVICE.

I, Edward A. Kaier, Attorney for the Appellees and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 25th day of February, 1964, I served copies of the foregoing motion on the several parties by mailing copies thereof, properly addressed, and with postage prepaid to:

1. Honorable Robert Kennedy, Attorney General of the United States, Department of Justice, Washington 25, D. C.
2. Honorable Archibald Cox, The Solicitor General, Department of Justice, Washington 25, D. C.
3. John H. D. Wigger, Esquire, Attorney, Department of Justice, Washington 25, D. C.
4. Robert C. Zampano, United States Attorney for the District of Connecticut, Federal Building, New Haven, Conn.
5. Robert W. Ginnane, Esquire, General Counsel Interstate Commerce Commission Washington 25, D. C.
6. Fritz R. Kahn, Esq., Asst. General Counsel Interstate Commerce Commission Washington 25, D. C.
7. John S. Fessenden, Esquire and Homer S. Carpenter, Esquire, Attorneys for Appellants 618 Perpetual Building Washington, D. C. 20004
8. Robert J. Gillooly, Esquire, Counsel for Appellants 152 Temple Street, New Haven 10, Conn.

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STATUTES:**Interstate Commerce Act (49 U.S.C. 1 et seq.):**

| | |
|--|--|
| National Transportation Policy | 3, 13, 14, 15, 16, 19, 21 |
| Section 1(5) | 16, 21 |
| Section 1(6) | 3, 4, 5, 7, 8, 10, 11, 12, 16, 17, 19, 20, 21 |
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| Hoch Smith Resolution, January 30, 1925, 43 Stat. 801, 49 U.S.C. Section 55 | 7 |
| Mann-Elkins Act, June 18, 1910, 36 Stat. 544, 49 U.S.C. Section 1(6) | 8 |
| The Hepburn Act, June 27, 1906, 34 Stat. at 589, chap. 3591, 49 U.S.C. Section 15 | 5 |
| Transportation Act of 1920, 41 Stat. at 484-488, chap. 91, 49 U.S.C. Section 15 | 7 |

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. 719

ALL STATES FREIGHT, INC., ET AL., *Appellants*

v.

THE NEW YORK, NEW HAVEN and HARTFORD RAILROAD
COMPANY, (Richard Joyce Smith, William J. Kirk,
and Henry W. Dorigan, Trustees) ET AL., *Appellees*

On Appeal from the United States District Court for the
District of Connecticut

BRIEF IN OPPOSITION TO MOTION TO AFFIRM AND
RESPONSE TO MEMORANDUM FOR THE INTER-
STATE COMMERCE COMMISSION AND THE UNITED
STATES

STATEMENT

Appellant All States Freight, Inc., and the other appellants named in Appendix A hereto, oppose the Motion to Affirm, without further hearing, the judgment of the court below.

While the nature of the case is for the most part adequately presented in the statements thereof appearing in the Jurisdictional Statement and the Motion to Affirm there is an erroneous statement of fact at pages 2 and 3 of the Motion to Affirm which requires correction. There, appellees, by reference to the decision of the court below, indicate that the New York, New Haven, and Hartford Railroad Company initiated the rates in issue in part to meet competitive trailer-on-flatcar services of other railroads which *service the New Haven was not in a position to handle extensively because of equipment and clearance difficulties*. Further, appellees state that the New Haven was required to establish the rates in issue because "it had no funds to provide [trailer-on-flatcar service] on a fully competitive scale." Although evidence respecting physical disabilities on the part of the New Haven in performing trailer-on-flatcar service was introduced at the hearing before the Commission the record also includes evidence that those disabilities were removed by September of 1959 and further contains testimony by a witness for the New Haven that thereafter it was able to render trailer-on-flatcar service comparable to and competitive with that of other railroads.

In appellants' view of the case the foregoing factual matters are of no real significance, but because the court below based its decision on the competitive position of the New Haven Railroad rather than upon a testing of the Commission's decision against settled principles of judicial review and the provisions of the statute which the Commission is required to administer and enforce, it is imperative that there be no misunderstanding as to these factual matters.

In view of the memorandum submitted jointly by the Interstate Commerce Commission and the United

States there is, for purposes of this appeal, one other fact which has not heretofore been emphasized that should be noted. The court below in reaching its decision did not remand the case to the Commission. Rather, its judgment annulled and set aside the decision of the Commission to the extent that it found the rates in issue to be unlawful and permanently enjoined the United States or the Commission from enforcing that decision (13a-14a).¹

ARGUMENT IN OPPOSITION TO MOTION TO AFFIRM

Appellees' arguments in support of their Motion to Affirm are directed to the proposition that the questions presented by this appeal are not sufficiently important to warrant plenary consideration by this Court. But the motion itself suggests the necessity for consideration and disposition of the issues by this Court, for if the court below was correct in its construction of Section 1(6) of the Interstate Commerce Act the Commission will be powerless to pursue the goals of regulation set forth in the National Transportation Policy² in that it will be unable to control minimum rates and thereby to protect the financial integrity of the transportation system.

Section 1(6) of the Act requires carriers to establish, maintain, and enforce just and reasonable classifications of property and further requires that rates for the transportation of property be made with reference to such classifications. The obvious significance of the requirement is that all rates must bear a reasonable and proper relationship to each other, and the

¹ All page references herein are to the Jurisdictional Statement unless otherwise indicated.

² 49 U.S.C. preceding §§ 1, 301, 901, and 1001.

Commission in the evaluation of any particular rate proposal not only may but must consider the impact of that proposal upon the total rate structure of the carriers. The serious error of the court below lies in its determination that the Commission may not disapprove a rate proposal on the ground of violation of just and reasonable classifications in that it is improperly related to the lawfully established and existing rate structure. While it is correct, as noted by the court below, that the requirement of just and reasonable classifications protects shippers from unduly high transportation charges by preventing a defeat of the Commission's maximum rate power, the court erred in failing to recognize that the requirement also necessarily protects carriers from unduly low transportation charges through a concomitant protection of the Commission's minimum rate power.

I

The first argument advanced by appellees is that the decision below does not constitute a new interpretation of the Interstate Commerce Act but rests simply on the historical meaning of that section. The court's interpretation of Section 1(6) reads (9a-10a):

"The just and reasonable classification requirement of § 1(6) was adopted in 1910 to give the Commission power to control classification, there being some doubt as to the existence of the power, and its purpose was to protect shippers by controlling the maximum charges for transportation of commodities. This purpose is fulfilled by the maintenance in being of class rates even though competitive conditions lead to the furnishing of service through variously constructed rates at lower charges. The practice of the Commission over the past 21 years, as pointed out by Commis-

sioner Webb in his dissent in the instant case, was consistent with this interpretation, permitting competitively compelled departures from the classification in e.g. *All Freight to Pacific Coast*, 248 I.C.C. 73, aff. *Pacific Inland Tariff Bureau v. United States*, 50 F. Supp. 376 (W.D. Wash. 1943), and cases cited, *supra*, [sic] We can see no difference in principle between those cases and the one before us and no sound reason for so interpreting § 1(6) as to prohibit such competitively compelled departures from classifications, within the established maxima, absent some other violation of the Act than the mere departure from the classification."

From the foregoing it is perfectly plain that the court held section 1(6) to be significant only in a maximum rate case. That is to say, the court viewed the section as having been enacted to prevent a defeat of the maximum rate power, conferred upon the Commission in 1906,³ through an increase in classifications rather than rates.

The critical importance of the issue presented to this Court is well demonstrated by the statement of the court below in rejecting the Commission's interpretation of Section 1(6). That statement, which appears in the paragraph of the opinion immediately following the paragraph previously quoted, reads (10a-11a):

"The Commission fears that approval of these rates would be legislation on its part, apparently because it would be the final blow to classification as a control over minimum rates and a further weakening of its role as a 'giant handicapper.' Having permitted over a long period exceptional

³ The Hepburn Act, June 27, 1906, 34 Stat. 589, 49 U.S.C. § 15.

rates which actually move the vast preponderance of this traffic at rates below the class rates, it would seem that it has already effectually legislated or interpreted the modification of what it now claims was the original meaning and purpose § 1(6). It is strange to find it boggling at this final step of so little effect on traffic actually moving under class rates.⁴ In any case, we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15a(3). The record discloses no violation of these sections. It would appear that the Commission here invokes § 1(6) as a means of preserving a basis for the 'value of service' concept in ratemaking referred to above, in a desire to hold fast to a past which has already slipped away beyond our reach."

As the court below noted, the Commission viewed the requirement of just and reasonable classifications for ratemaking purposes as also protecting its minimum rate power.⁵ Obviously, just as an increase in classification could be used to defeat the maximum rate power so it is manifest that a decrease in classification could be used to defeat the minimum rate power. And if it may so be used, as the court below would hold, the Commission's regulatory task will be impossible of performance. Of the utmost significance in this context is the fact that the minimum rate

⁴ While the court had noted that only about one percent of rail carload traffic in the East moved on class rates (7a), the Commission had found that the rates in issue represent the highest level at which *the bulk* of the New Haven's westbound traffic would move (17a), and had concluded that the rates were destructive of the rate structure generally, not just of class rates. (22a).

⁵ 49 U.S.C. § 15(1).

power was given to the Commission in 1920 by amendment of Section 15(1)⁶ which also confers the maximum rate power and which specifically embraces within its terms the power to determine and prescribe just, fair, and reasonable individual or joint classifications.

The Commission in its decision very carefully noted and explained that the term "classification" as used in Section 1(6) was broader than the specific classification used by carriers in the establishment of class rates and that the Act required *all* rates to be made with reference to just and reasonable classifications. It further noted that this Court in *Ann Arbor R. Co. v. United States*, 281 U.S. 658 (1930) had confirmed the duty of the Commission to regulate the justness and reasonableness of the relationship of rates for the various classes of traffic and the various classes and kinds of commodities. This Court's decision in that case was based upon the *Hoch-Smith Resolution*, 49 U.S.C. Section 55, which is still in effect (21a-23a).

It will be observed that the Court below in setting forth its version of the historical meaning of Section 1(6) refers to numerous decisions to show that the practice of the Commission over the past 21 years has been consistent with the court's "maximum rate" doctrine (9a). However, reference to the Commission's report will disclose that it referred to many of those same decisions and pointed out that they differed from the instant case in that there the rates at issue did not constitute departures from the just and reasonable classifications required by Section 1(6) either because they reflected an average classification or because they were higher than the rates which would otherwise

⁶ Transportation Act of 1920, 41 Stat. 484, 49 U.S.C. § 15.

apply and thereby were not destructive of those rates (20a-21a). Thus the court below misinterpreted the specific significance of Commission decisions issued in a field of its particular competence.

Plainly the requirement of Section 1(6) that *all* rates, class or commodity, meet the test of reasonable classifications was and is intended to protect both the maximum and minimum rate powers of the Commission. Certainly, if Congress had intended otherwise it would have so provided at the time it conferred the minimum rate power on the Commission in 1920, some ten years after having established the requirement that carriers maintain just and reasonable classifications for ratemaking purposes.⁷ It follows, therefore, that the publication of a rate which for all practical purposes lumps both straight and mixed shipments and virtually any kind of commodity for the purpose of determining transportation charges necessarily violates the basic requirement of Section 1(6) that just and reasonable classifications *shall* be maintained for purposes of ratemaking.

The Court below has declared that the rates in issue may not be condemned under Section 1(6) of the Act even though they constitute a departure from just and reasonable classifications (9a). Thus is achieved a judicial modification of the words of the statute in plain derogation of the rule that a court must construe what Congress has written and cannot add to, subtract from, delete, or distort the words used.⁸ Similarly it is not within the judicial function to rewrite a statute so that it will authorize what the court thinks

⁷ Mann-Elkins Act, June 18, 1910, 36 Stat. 544, 49 U.S.C. § 1(6).

⁸ 62 *Cases of Jam v. United States*, 340 U.S. 593 (1951).

should be authorized.⁹ The court rationalizes its departure from principle and its modification of the law as enacted by Congress by adverting to economic conditions which have changed since the law was enacted. These changed conditions were also recognized by the Commission which soundly noted that it was the province of Congress and not the Commission to make any necessary changes in the law (23a-24a).

The sharp importance of the issue presented by the decision of the court below is clearly demonstrated in the contrast between it and the decision of the three-judge court in *Pennsylvania Truck Lines, Inc. v. United States*, 219 F. Supp. 871, 875 (W.D., Pa. 1963) where, in sustaining a decision of the Interstate Commerce Commission the Court said:

“While there may be some merit to the plaintiff’s contention that changed conditions in the transportation industry since the enactment of the Interstate Commerce Act require a reassessment of the National Transportation Policy with respect to railroads, this Court should not become the vehicle for reshaping the laws which Congress has written. The plaintiff’s appeal in that regard must be to Congress itself. The complaint must be dismissed.”

II

The second argument in support of the motion is closely akin to the first and is a contention that the court below did not hold that the meaning of the Interstate Commerce Act should be modified in light of changed economic circumstances and that the Court’s

⁹ *Story v. Snyder*, 184 F. 2nd 454 (D.C. Cir., 1950).

interpretation of Section 1(6) simply accords with the original meaning of that section. In point of fact, however, the Court indulged in a lengthy dissertation as to the development of class rates, commodity rates, and all-commodity rates (6a-9a). In the course thereof the court enumerated factors considered in the classification of commodities for transportation, including value of service, and stated that the semi-monopoly position of the railroads allowed them to observe these factors, particularly value of service, well into this century (6a). The court concluded that departures from, i.e. violations of, just and reasonable classifications when competitively compelled do not violate the Act. In effect the court held, without support in the Act or decisional precedent, that the existence of competition justifies complete disregard of the requirements of Section 1(6). This is the new interpretation which makes it tremendously important for this Court to hear and determine the issues presented.

As already noted, the court below cited a number of Commission decisions in which all-commodity rates had been approved and then said that it could see no difference in principle between those cases and the decision of the Commission under review (9a). However, the decision of the Commission clearly recognized *the distinction in principle* between those cases and the one at bar by pointing out that all-commodity rates heretofore approved have generally applied on a limited number of commodities and required the mixing of two or more commodities in order to reflect the average carload rate for the commodities covered, thereby adhering to rather than departing from classification principles (20a). The Commission further observed that in those few cases where all-commodity

rates not limited to mixed shipments were approved, the rates were at the same level or higher than the car-load commodity rates and thereby did not represent departures from the classifications required by Section 1(6) of the Act. Further, the Commission noted that where all-commodity rates applicable on straight shipments would constitute departures from classification as required by the Act they have been condemned (21a). Thereafter the Commission discussed the rates here in issue, having already recognized that they range from 45 to 19 per cent of first class and constitute the highest level at which the bulk of the New Haven's westbound traffic would move, noted that thousands of commodities are included in the adjustment without relation to classification principles and concluded that the rate proposal thereby violates Section 1(6) (22a).

The court, without referring to the foregoing specific findings and conclusions of the Commission, said that the Commission appears to invoke Section 1(6) "as a means of preserving a basis for the 'value of service' concept in ratemaking * * * in a desire to hold fast to a past which has already slipped away beyond our reach." (11a) The plain significance of the decision is that the requirement that rates be made with reference to just and reasonable classifications of property can no longer be an operative standard of ratemaking because the legislation was enacted at a time when the railroads "were powerful monopolies." (11a) It would be serious enough if the court below had held that the Commission misapplied the factors and criteria which go into just and reasonable classifications for it would thereby have substituted its judgment for that of the administrative agency in a field where the

agency is vested with broad discretion.¹⁰ It is even more serious where the court holds that the Commission may not apply the standards of Section 1(6) to rates applying on virtually any commodities in straight shipments, with only very limited exception, which the

¹⁰ *Alabama Great S.R. Co. v. United States*, 340 U.S. 216 (1951); *Ayrshire Collieries Corp. v. United States*, 335 U.S. 573, 592-593 (1949); and *United States v. I.C.C.*, 221 F. Supp. 584, 586-587 (D.C., 1963) where the court said:

"The fixing of railroad freight rates is a complex and intricate undertaking requiring expert knowledge and skill. It differs from the determination of rates to be charged by public utilities of other types. Most public utilities, other than those in the transportation field, deal in a single commodity or service, such as gas, electric power, telephone service, and the like. In such cases, it is necessary to calculate what income is likely to be received by the utility if the rate is fixed at a specific amount, and ascertain whether the expected earnings would result in a fair return. In the case of transportation facilities, however, rates must be established on hundreds, or possibly thousands, of different commodities. *The question then becomes, in part, whether the entire rate structure comprising the sum total of the income to be realized from all shipments of these many types, will result in a fair return to the carrier.* No one freight rate may be considered individually. The entire group with its innumerable ramifications must be evaluated as a whole, like a piece of tapestry composed of thousands of individual threads of various colors and hues. It is a resultant of many elements. Economic effects of particular rates on communities which they affect, and on lines of business to which they relate; the extent to which they are likely to attract shipments to transportation facilities of a specific type or draw it to competitors; the amount of charges that the traffic will bear and numerous other factors must all be weighed in determining the reasonableness of freight rates. The task comprehends much more than mathematical computations. The outcome depends on sound judgment and keen discernment based on an appraisal of the various considerations and their interrelation. Obviously strong reliance must be placed on the expertise of the regulating agency." (Emphasis added)

Commission found would defeat all higher rates and would thereby destroy the just and reasonable rate structure upon which all carriers must depend. Under the holding of the court below the Commission is powerless to regulate carrier rate structures as a whole and is thereby powerless to accomplish the goals of regulation embodied in the Act and set forth in the National Transportation Policy as recognized by this Court in *Ann Arbor R. Co. v. United States*, 821 U.S. 658 (1930), and *Baltimore & Ohio Railroad Co. v. United States*, 345 U.S. 146 (1953).

III

The third argument of the Motion to Affirm is that the court did not, as asserted by appellants, ignore a finding by the Commission that during a specific period the New Haven transported more than 4,000,000 pounds of *additional* traffic at the rates involved in return for only \$129 of additional gross revenue. It is urged by appellees that the matter is of no great significance because it was not mentioned by the Commission in the portion of its report entitled "Discussion and Conclusions," and appellees further state that the fact is of no consequence because there was no way of determining the volume of traffic which would have moved in the absence of the rates and no indication of what the average weight of lading per car would have been.

A. As to appellees' first point, there can be no question that the Commission did make the finding (19a), and it went on to note that the additional \$129 for transporting over 4,000,000 pounds of additional freight represented less than one-third of a cent in revenue for each additional 100 pounds of traffic moved (19a).

The fact that the finding was made in the portion of the Commission's report discussing the evidence and was not specifically referred to in the portion entitled "Discussion and Conclusions" does not invalidate the Commission's conclusion that the considered rates constitute a destructive competitive practice. " * * * There is no requirement that the Commission specify the weight given to any item of evidence or fact, or disclose mental operations by which its decisions are reached. * * * " ¹¹ All that the statute requires is a report which sufficiently discloses the basis of the Commission's judgment. ¹² Most assuredly the Commission is not required to spell out the obvious, and it is painfully obvious that the transportation of 4,000,000 pounds of additional freight for virtually no increase in revenue must result in a significant decrease in net revenue. In this factual circumstance the rate proposal necessarily has an adverse effect upon the proponent thereof. It was upon this basis, coupled with the finding that the complete departure of the considered rates from classification principles will be destructive of just and reasonable rate structures, that the Commission concluded that the considered rates constitute a destructive competitive practice within the proscription of the National Transportation Policy.

B. As to appellees' second point, the record shows their contention to be in error. The Commission in its report reproduced a table introduced in evidence by the New Haven Railroad which showed the traffic moved under the proposed rates in comparison with

¹¹ *Baltimore & O. R. Co. v. United States*, 298 U.S. 349, 359 (1936).

¹² *Alabama Great S. R. Co. v. United States*, 340 U.S. 216, 228 (1951).

the traffic which would have moved in the absence of the proposed rates (18a). That exhibit itself set forth the average weight per car and the average revenue both under the proposed rates and in their absence. Moreover, Division 2 of the Commission in its report on the proposed rates (313 I.C.C. 275) made specific note of the contention of the protestants that for every 30,000 pounds of traffic diverted from motor carriers by the proposed rates, 100,000 pounds is diverted from the New Haven's higher priced boxcar service. (313 I.C.C. at page 278). The evidence abundantly supports the Commission's conclusion and it made the findings necessary to a logical understanding of its conclusion.

In spite of the foregoing, appellees quote the comments of the court below that the court did not fully understand the basis of the Commission's conclusion that the proposal is a destructive competitive practice. They then assert that the court's reversal of the Commission " * * * is quite an ordinary conclusion which presents no substantial question for this Court."¹³ It is worthy of note that the court treats the Commission's conclusion as having been reached under Section 15a(3) when in point of fact it was not. The court apparently is of the view that a finding of destructive competition can only be reached where Section 15a(3) is involved and then only under unique circumstances. It looks for support of its decision to *New York, New Haven & Hartford R. Co. v. United States*, 199 F. Supp. 635 (1961) which was vacated by this Court in *I.C.C. v. New York, N. H. & H. R. Co.*, 372 U.S. 744 (1963).

The court's error here is twofold. First, the National Transportation Policy specifies that all provi-

¹³ Motion to Affirm, page 9.

sions of the Act shall be administered and enforced with a view to carrying out that policy. The rates in question do not present issues under Section 15a(3) for their primary genesis lay in an attempt by the New Haven to meet the trailer-on-flatcar competition of other railroads. The issues do clearly arise under Sections 1(5), 1(6), 2, and 3(1). If the Act is to be construed for the first time as not permitting a finding of destructive competition except in conjunction with the resolution of issues under Section 15a(3) the departure from the explicit provisions of the Act and the National Transportation Policy should be initiated by Congress.

The second error of the court on the question of destructive competition is that the considered rates clearly meet the court's own test in that they are hurtful to the proponents thereof as well as to competitors. In this regard, bearing in mind the Commission's factual findings and the implications which logically follow therefrom, the commission's statement of its conclusion is vastly more intelligible than is the obscure statement of the court below. The Commission's conclusion reads (22a):

"The rates here under investigation, however, apply not only on mixed but also on straight shipments of numerous commodities which would otherwise be subject to higher rates. Thousands of commodities are included in this sweeping adjustment without relation to classification principles, and without regard to the destructive effect which the proposed rates would have upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. If not restricted to reasonable mixtures, such rates could, and no doubt would, break down these rate structures to the detriment of car-

riers and shippers alike. The evidence is clear that such result would follow approval of the proposed rates. In these circumstances, the rates must be condemned as constituting a destructive competitive practice in contravention of the national transportation policy, and also as in violation of section 1(6) of the act."

There can be no question but that the court below has intruded upon the administrative jurisdiction of the Commission itself. It is the Commission's function to determine the transportation needs of the country and to so regulate the carrier members of the national transportation system in terms of both operations and rates as to meet those needs. In the performance of that task the Congress has established clear standards for the Commission to follow and it is beyond the authority of the court below to declare that one of those standards may be disregarded because a proposal does not appear to violate other standards. The basis for the court's declaration is that because the railroads are no longer a monopoly, economic circumstances are significantly different than when Section 1(6) was enacted. But this is immaterial for it was not the function of the court to pass upon the wisdom of the Commission's action, and neither the Commission nor the court is authorized to change the statute. Rather, it was the function of the court to test the Commission's action against the Congressional mandate.¹⁴ It is a matter of the utmost importance when a court reverses the Commission because of its disagreement with the wisdom of the Commission's action, and it is of vastly greater importance when a

¹⁴ See, *American Trucking Assos. v. United States, I.C.C.*, 364 U.S. 1, 15 (1960).

court declares that the Commission may not find rates to be in violation of a section of the Act.

IV

The final argument of appellees in support of their motion is that the court below was obviously correct in holding that the railroads are "asserting whatever inherent advantages of cost and service they possessed" (13a). However, both appellees and the court below ignore the fact, recognized by the Commission and by the court at the outset of its opinion, that the competition which the New Haven set out to meet was the trailer-on-flatcar service of other railroads. The very railroads whose competition the New Haven sought to meet promptly published similar rates and are among the railroads now defending those rates although they did not submit evidence to the Commission to show that the rates were necessary to compete with other modes of transportation.

In this context, appellees also argue that no important issue is presented by the holding of the court below that competition justifies departure from the requirements of the Act. They point out that the court's holding does not prevent a carrier from charging higher rates when it can successfully do so to offset lower rates such as those which this Court found to be lawfully required in *Baltimore and Ohio Railroad Co. v. United States*, 345 U.S. 146 (1953). The important issue is not whether the decision of the court below leaves a carrier free to in some instances charge a higher rate nor was that the important issue in the *Baltimore and Ohio* case. There, this Court held that the Commission could require carriers to perform transportation at low rates so long as the rate structure as a whole produced

sufficient revenues to protect the financial integrity of the carriers. Here the issue squarely presented to this Court is whether or not the Interstate Commerce Commission has power to protect the just and reasonable rate structures of the carriers by condemning under Section 1(6) a rate proposal which would destroy those rate structures.

**RESPONSE TO MEMORANDUM FOR THE INTERSTATE
COMMERCE COMMISSION AND THE UNITED STATES**

Subsequent to the filing of the Jurisdictional Statement the Interstate Commerce Commission and the United States, defendants in the court below, submitted a memorandum in which they stated that the Commission believes the lower court's interpretation of Section 1(6) and of the National Transportation Policy to be erroneous. They went on to state that the Commission entertained some doubt as to its own findings in relation to matters relied upon by the court and therefore reopened the proceedings before it for further consideration and hearing. They then state that both believed an appeal to this Court to be inappropriate under the circumstances.

Appellees comment upon the joint memorandum at page 5 of their Motion to Affirm and state that, "Reopening the case before the Commission will have no effect on the unlawful application of Section 1(6) by the Commission." They go on to suggest that the appellants are apparently satisfied with the state of the record before the Commission. We assume that this suggestion is predicated on the fact that the appellants are actively pursuing their appeal to this Court, and if our assumption is correct the suggestion is in error. The court below did not remand the case to the

Commission and its decision presents questions of law which are ripe for review by this Court.

Appellants are aggrieved by the holding of the court below that the Commission may not condemn the rates in issue under Section 1(6) of the Interstate Commerce Act. In view of the fact that the court below reversed the Commission on a question of law and did not remand the proceeding to the Commission for the making of further findings or for further proceedings of any kind, the doctrine of law of the case would seem to preclude the Commission from applying the standards of Section 1(6) to the rates in issue in any further proceedings. As this Court has held, the position of an administrative tribunal is much akin to that of a United States district court.¹⁵ Thereby, when a decision of an administrative tribunal is reviewed by a court in an appellate capacity, the pronouncements of the reviewing court on questions of law become the law of the case in any further proceedings before the administrative tribunal, unless the decision of the reviewing court is declared erroneous by a tribunal of competent jurisdiction holding a superior position in the judicial pyramid. “* * * In such a situation it behooves the inferior arbiter to exercise great care that ‘the law of the case’ is applied to the facts of the case when they have been precisely determined by it. This is so even when it finds itself in well founded disagreement with its reviewer.”¹⁶

¹⁵ *Federal C. C. v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940).

¹⁶ *Morand Bros. Beverage Co. v. National Labor Rel. Bd.*, 204 F. 2d 529, 532 (1953), cert. den. 346 U.S. 909.

The court below, in reviewing the decision of the Interstate Commerce Commission and in setting aside that decision, stated "The issues of this case should never have been framed under Section 1(6) nor should the meaning of the National Transportation Policy, as referred to in Section 15a(3), have been distorted to supplement it." Appellants believe, for all of the reasons set forth in the Jurisdictional Statement, that the court below committed grievous legal error and that the decision of the Interstate Commerce Commission was proper and correct in all material respects. While, on the basis of a new record, the Commission is free to find that the rates in issue violate other sections of the Act, i.e., 1(5), (2), or 3(1), the application of the doctrine of law of the case forecloses a determination that the considered rates are in violation of Section 1(6). Appellants submit that there is a vital legal issue arising from the lower court's treatment and interpretation of Section 1(6) and that they are entitled to relief with respect thereto from this Court.

If this Court be of the opinion that the Commission in its reopened proceeding is or should be free to consider the lawfulness of the rates in issue under all sections of the Act and the National Transportation Policy and is therefore not inclined to give the case plenary consideration at this time, appellants respectfully ask that the decision of the court below be vacated and the case be remanded with instructions that the court below further remand the matter to the Commission for appropriate proceedings.

CONCLUSION

Appellants respectfully submit that the questions posed by the decision below are substantial and are of sufficient public importance to require plenary consideration by this Court, and, therefore appellants request that the Motion to Affirm be denied.

Respectfully submitted,

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March 17, 1964

Appendix A

APPELLANTS

All States Freight, Inc.

Chicago Express, Inc.

Eastern Express, Inc.

Long Transportation Company

W. L. Mead, Inc.

Ramus Trucking Lines, Inc.

Roadway Express, Inc.

Spector Freight System, Inc.

The Western Express Company.

Wilson Freight Forwarding Company

The Eastern Central Motor Carriers Association, Inc.

No. 22

Office Supreme Court, U.S.

FILED

AUG 25 1964

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

ALL STATES FREIGHT, INC., ET AL., Appellants

v.

**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY, ET AL., Appellees**

On Appeal From the United States District Court
For the District of Connecticut

BRIEF FOR THE APPELLANTS

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August 25, 1964

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

No. 22

ALL STATES FREIGHT, INC., ET AL., *Appellants*

- v. -

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY, ET AL., *Appellees*

On Appeal From the United States District Court
For the District of Connecticut

BRIEF FOR THE APPELLANTS

I

OPINIONS BELOW

The opinion of the United States District Court for the District of Connecticut (R. 39-49), was handed down on July 23, 1963, and is reported at 221 F. Supp. 370. The report and order of the Interstate Commerce Commission (R. 9-31) is dated December 28, 1961, and appears at 315 I.C.C. 419.

II

JURISDICTION

The judgment of the District Court (R. 50-51), was entered September 16, 1963, and notice of appeal was filed in that Court by these appellants (R. 51-53), on November 2, 1963. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b) and is sustained by the following decisions: *American Trucking Assos. v. United States, I.C.C.*, 364 U.S. 1 (1960); *Interstate Commerce Commission v. J-T Transport Co.*, 368 U.S. 81 (1961); and *United States v. Drum*, 368 U.S. 360 (1962). Probable jurisdiction was noted on March 30, 1964. (R. 386)

III

STATUTES INVOLVED

This case involves the application of the Congressional policy for the regulation of transportation as set forth in the Interstate Commerce Act. The provisions of that Act which are particularly pertinent are as follows:

National Transportation Policy, 49 U.S.C. preceding §§ 1, 301, 901, and 1001

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges

for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.”

Section 1(6) of the Interstate Commerce Act, 49 U.S.C. 1(6)

“It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.”

Section 1(5) of the Interstate Commerce Act, 49
U.S.C. 1(5)

"All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 2 of the Interstate Commerce Act, 49
U.S.C. 2

"That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3(1) of the Interstate Commerce Act, 49
U.S.C. 3(1)

"It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference, or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, associ-

ation, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 15a(3) of the Interstate Commerce Act,
49 U.S.C. 15a(3)

"In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act."

IV

QUESTIONS PRESENTED

1. Whether the court below acted properly in setting aside the order of the Interstate Commerce Commission upon the ground that the Commission has already effectively legislated the modification of the meaning and purpose of Section 1(6) and ought not now to "boggle"¹ at the final step.

2. Whether a finding by the court below of changed economic conditions is a proper basis for setting aside

¹ Decision of the Court below (R. 44), 221 F. Supp. at p. 375.

the Interstate Commerce Commission order which applied the statute as enacted by Congress.²

3. Whether the court below properly substituted its judgment for that of the Interstate Commerce Commission as to the effect of a rate proposal upon the historic rate structure of the carriers while, at the same time, ignoring the factual findings of the Commission upon which that agency's judgment was predicated.

4. Whether the court below acted properly in setting aside as unsupported the decision of the Interstate Commerce Commission which held the rate proposal under investigation to constitute a destructive competitive practice where the evidence showed and the Commission found that the proposed rates would adversely affect the proponent thereof as well as competing carriers.

5. Whether the court below acted properly in setting aside an order of the Interstate Commerce Commission upon the ground that the Commission's jurisdiction may be adequately exercised under provisions of law other than the one upon which the Commission's order was based.

² Thus, the court below is in direct conflict with the three-judge Court in *Pennsylvania Truck Lines, Inc. v. United States*, 219 F. Supp. 871 (W.D., Pa. 1963) which sustained a decision of the Interstate Commerce Commission saying (219 F. Supp. at p. 875):

"While there may be some merit to the plaintiff's contention that changed conditions in the transportation industry since the enactment of the Interstate Commerce Act requires a reassessment of the National Transportation Policy with respect to railroads, this Court should not become the vehicle for reshaping the laws which Congress has written. The plaintiff's appeal in that regard must be to Congress itself. The complaint must be dismissed."

STATEMENT OF THE CASE

The decision of the court below set aside as erroneous a decision of the Interstate Commerce Commission holding certain rate schedules published by the railroad appellees to be in violation of the Interstate Commerce Act. Those schedules were first published by the New Haven Railroad about the middle of the year 1959 and thereafter other railroads serving New England, namely, the New York Central, the Boston and Maine, and the Maine Central established similar schedules for competitive reasons. (R. 10) The other railroad appellees were parties to the tariffs as connecting carriers. Although the Commission initially suspended the rates for the seven month statutory period, the suspension was vacated upon petition of the railroads. The Commission, however, continued its investigation into the lawfulness of the rates which culminated in the decision that is now before this Court.

The rates involved were specified to apply from New England origins to Chicago and East St. Louis, Illinois. They were denominated as applicable to shipments of "freight-all kinds" and are commonly referred to as all-commodity rates. The considered rates differ from the usual or traditional all-commodity rates in that they were published to apply on straight earload shipments of single commodities as well as on earload shipments of mixed commodities. The schedules were published in Section 2 of a tariff, Section 1 of which named previously established all-commodity rates which apply only on mixed shipments containing at least five commodities, no one of which constitutes more than fifty per cent of the total weight of the shipment. (R. 10-11)

Although the tariff schedules excepted a few commodities from the rates at issue, it is apparent that by virtue of their application on straight or mixed shipments they would apply for the transportation of any of literally thousands of commodities which may move in interstate commerce in either straight or mixed carload shipments.³

The only railroad which introduced evidence in support of the described rates was the New Haven, the other three proponents taking the position that they simply published the rates in order to remain competitive with the New Haven. (R. 10) The rates are stated in cents per hundred pounds and vary in accordance with the weights of the carloads shipped, ranging from the highest rates per hundred-weight applicable to shipments of 20,000 pounds to the lowest rates applicable to shipments of 70,000 pounds. (R. 11) The level of the rates ranges from a high of 45 percent of first class to a low of 19 percent of first class. (Exhibit 1. R. 109, 259) And by reason of their virtually all-inclusive character they defeat all other and higher rates published by the railroads to apply upon specified individual commodities or upon described commodity groupings, or other categories or articles grouped for rate-making purposes. As such the considered rates are the highest rates which would be charged for rail boxcar service. (R. 297)

The purpose underlying the rates, as disclosed by evidence offered by the New Haven, was to compete with the Plan III trailer-on-flatcar (TOFC) service of other railroads and to attract and retain high-grade

³ The commodities excluded from the rates are: livestock; explosives; military equipment; perishable freight; plumbers goods; stoves, ranges, and parts; furniture; furnaces, radiators, and parts; china, crockery, and earthenware; and refrigerators. (Exhibit 1, R. 111, 259)

tonnage which might otherwise move by truck. (R. 11) The primary genesis of the rates was clearly the TOFC competition of other railroads and this is the reason that the rates in issue were limited to shipments moving to Chicago and East St. Louis, the only destinations for which Plan III TOFC rates were then in effect from New England origins. (R. 268)

Moreover, in the proceedings before the Commission the New Haven introduced considerable evidence to show its difficulties in performing Plan III TOFC service because of physical limitations on its lines. That evidence also discloses that those physical limitations were eliminated by September of 1959 and that thereafter the New Haven was able to render a Plan III TOFC service comparable to that of other railroads. (Exhibit 1, R. 105, 259, and R. 268, 332, 340-341) It must also be noted as significant that the Plan III service to which the New Haven pointed as making the considered any-commodity rates competitively necessary was the service of the New York Central and the Boston and Maine. Yet those very railroads were parties to the proceedings before the Commission, were plaintiffs in the court below, and are appellees before this Court in defense of the rates condemned by the Commission.

In its decision the Commission made specific reference to evidence offered by the New Haven for the apparent purpose of demonstrating the effect of the rates in issue on the rail proponents. That discussion (R. 11-12) is of the utmost significance for it includes findings of fact upon which the Commission's conclusions were based which are totally ignored in the decision of the court below. As the Commission found, the New Haven's evidence (Exhibit 28, R. 200, 305) demonstrates that the considered rates resulted in the New Haven's transporting more than 4 million pounds

of additional traffic for \$129.00 in added gross revenue, amounting to less than one-third of a cent in revenue for each additional 100 pounds of traffic moved. (R. 12) Necessarily, when the additional costs of providing the additional service are considered the inexorable conclusion is that the considered rates caused the New Haven to suffer a substantial decrease in net revenue. Analysis of Exhibit 28 will permit a graphic demonstration of the point. For this purpose it is fair to assume that all of the traffic moved in carloads of 40,000 pounds, a reasonable median considering the varying loading characteristics of all commodities. The service rendered under the considered rates is virtually the same as that of the ordinary rail boxcar service (R. 269)⁴ and in consequence it is fair to apply cost data as shown in Table 1 of Exhibit 33 (R. 209, 365) to both types of service. The following table, summarizing Exhibit 28 on the basis described, shows the startling effect of the rates in issue:

| | Boston to Chicago | |
|---------------------------------------|-------------------------|-------------------------|
| | At Rates In Issue | At Normal Rates |
| Weight Transported | 18,452,368 | 14,158,891 ⁵ |
| Cost per cwt. of Providing Service | 92.5 cents ⁶ | 92.5 cents ⁶ |
| Cost of Service | \$170,684.42 | \$130,969.73 |
| Revenue Received | \$207,414.15 | \$207,284.62 |
| Net Above Out-of-Pocket Cost | \$ 36,379.73 | \$ 76,314.89 |

⁴ The only differences in the service is that special privileges such as promiscuous loading and marriage of cars, which are explained by the railroads as being for their own economy, do not apply for service under the considered rates. (R. 269-271)

⁵ Represents the portion of the traffic shown on Exhibit 28 which the New Haven assumes would have moved by rail at normal rates. (R. 301-302)

⁶ Out-of-pocket cost shown in Exhibit 33. (R. 209, 365) for shipment of 40,000 pounds.

From the foregoing it is patent that the evidence before the Commission indicated that in transporting over 4 million pounds of additional traffic at the rates under investigation the New Haven Railroad secured net revenue over out-of-pocket costs of \$39,585.16 *less* than it would have secured at its normal rates for a lesser volume of traffic. When it is considered that the rates involved represent the *maximum* level of rates to be applied on the bulk of the New Haven's west-bound traffic, the conclusion is inescapable that they are destructive of the New Haven's own revenue.

The Interstate Commerce Commission, after a brief recitation of the significant facts, gave consideration to the history of all-commodity rates, noting that in most instances they had applied only on mixed shipments and usually reflected the average carload rate basis for articles in the shipment thereby adhering to rather than departing from the requirements of Section 1(6) of the Act. (R. 13-14) It then observed that the rates at issue applied on straight as well as mixed shipments, and distinguished the few earlier decisions approving similar rates by observing that in those cases the level of the all-commodity rates was as high or higher than the carload commodity rates which would apply on the individual articles in a shipment. (R. 14) It also pointed out that all-commodity rates applying on straight shipments which would defeat other rates of the sponsoring carrier or carriers had been condemned in earlier decisions. (R. 14)

Upon consideration of the entire record and the history of all-commodity rates, the Commission turned its attention to Section 1(6) of the Interstate Commerce Act [49 U.S.C. § 1(6)] and held that the provisions thereof apply with respect to all rates, not

merely to traditional "class rates". (R. 14-15) It then held that the rates under investigation, by virtue of their application on straight shipments of thousands of commodities which would otherwise be subject to higher rates, were clearly in derogation of classification principles and, therefore, in violation of Section 1(6) of the Act. It also held that the sweeping application of the rates would undoubtedly break down the just and reasonable structures of the carriers which are necessary to the maintenance of an adequate national transportation system. It finally held that the considered rates constitute a destructive competitive practice under the National Transportation Policy. (R. 15)

After reaching its conclusion that the rates of the New Haven and the other railroads were unlawful, the Commission set forth additional reasoning in support of its definite conclusions. It noted particularly the competitive situation confronting the carriers and, with unassailable logic, held that these competitive problems must be met within the limits of the regulatory standards established by Congress. It further observed that should a change in those standards be required only Congress has the power to effectuate such modification. (R. 15-17)

The United States District Court for the District of Connecticut set aside the Commission's order on the ground that the provisions of Section 1(6) of the Interstate Commerce Act have no bearing in this instance and that the issues ought never to have been framed thereunder (R. 46); that Sections 1(5), 2, and 3 of the Interstate Commerce Act [49 U.S.C. §§ 1(5), 2, and 3] vest the Commission with ample powers to regulate rates and charges without reference to Section

1(6) (R. 44); that by past administrative decisions the Commission has effectively legislated a modification of Section 1(6) and ought not now to "boggle" at the final administrative repeal thereof (R. 44); that in any event Section 15a(3) [49 U.S.C. § 15a(3)] forecloses the Commission from condemning the "all-freight" rates inasmuch as they have been shown to produce revenues in excess of out-of-pocket costs (R. 45-46); and that even though by its terms the National Transportation Policy pervades the entire Act, its proscription of destructive competitive practices should not have been invoked by the Interstate Commerce Commission in this instance (R. 46).

VI

SUMMARY OF ARGUMENT

The order of the Interstate Commerce Commission which the decision below would set aside rests upon the rational finding that "all-freight" rates applied to thousands of commodities without relation to classification principles would have a direct and destructive effect upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. This, the Commission held to be in violation of Section 1(6) of the Interstate Commerce Act and of the National Transportation Policy. The decision below categorically held that the "all-freight" rates cannot be violative of Section 1(6) because the purpose of that section was to protect shippers by controlling the maximum charges for transportation and this purpose is fulfilled by the maintenance in being of class rates even though competitive conditions lead to the furnishing of service through variously constructed rates at lower charges.

The holding below is plainly erroneous because it prohibits invocation of Section 1(6) to condemn unreasonably low rates. The decision would provide a means whereby carriers could escape the Commission's regulatory power insofar as minimum rates are concerned simply by reducing classifications rather than rates. Moreover, the decision below would frustrate the Commission's duty to consider general and comparative levels in the market values of the various classes and kinds of commodities when fixing transportation rates. It is from the great body of rates, consisting of both class rates and specific commodity rates, that the carriers must secure the revenues necessary to the performance by them of adequate transportation service to the public. All-freight rates may, in certain circumstances, be reasonably related to this great body of rates and, therefore, not constitute a threat to the general structure. On the other hand, all-freight rates which cut across all classification considerations and which would have the effect of reducing the net income of the proponent carriers are themselves unlawful.

The conclusion by the Commission upon which it based its order requiring cancellation of the "all-freight" rates is that they constitute a destructive competitive practice in contravention of the National Transportation Policy and in violation of Section 1(6). This, the Commission said, followed from the fact that they applied to thousands of commodities without relation to classification principles and without regard to the destructive effect they would have upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. The unchallenged findings of the Commission were that the considered all-freight rates will reduce rather

than increase the net revenues of the proponent railroads, and will put in jeopardy the just and reasonable rate structure to which the carriers must look for revenues adequate to permit the continued provision of service to the public. The decision below brushes aside these solemn findings and conclusions upon the ground that they are "not clear" and rejects the Commission's ultimate conclusion upon the ground that the rates are above out-of-pocket cost. The error of the decision below in this connection lies in the fact that the issues do not arise under Section 15a(3) of the Act and in the further fact that it ignores the finding of the Commission that the all-freight rates would result in a reduction of net income for the railroads here involved rather than an increase, constituting thereby the very type of destructive competitive device which was condemned by the Supreme Court in *United States v. New York, New Haven and Hartford R. R. Co.*, 372 U.S. 744 (1962).

Finally, the decision below erroneously held that carrier rates are adequately policed under other sections of the Act and therefore need not meet the standard of Section 1(6). In effect the Court would require the Commission to repeal the provisions of Section 1(6) by administrative interpretation.

VII

ARGUMENT

A. The Court Below Erroneously Reversed Commission For Refusing to Modify Statute

Section 1(6) of the Interstate Commerce Act requires carriers to establish, maintain, and enforce just and reasonable classifications of property and further requires that rates for the transportation of property be made with reference to such classifications. The

obvious significance of the requirement is that all rates must bear a reasonable and proper relationship to each other, and the Commission, in the evaluation of any particular rate proposal, not only may but also must consider the impact of that proposal upon the total rate structure of the carriers. The serious error of the court below lies in its determination that the Commission may not disapprove the rate proposal on the ground of violation of Section 1(6) in that the proposal is improperly related to the lawfully established and existing rate structure.

While it is correct, as noted by the court below, that the requirement of just and reasonable classifications protects shippers from unduly high transportation charges by preventing a defeat of the Commission's maximum rate power, the court erred in failing to recognize that the requirement also protects carriers from unduly low transportation charges through a concomitant protection of the Commission's minimum rate power.

The court below set forth its mistaken view of Section 1(6) as follows (R. 44):

"The just and reasonable classification requirement of § 1(6) was adopted in 1910 to give the Commission power to control classification, there being some doubt as to the existence of the power, and its purpose was to protect shippers by controlling the maximum charges for transportation of commodities. This purpose is fulfilled by the maintenance in being of class rates even though competitive conditions lead to the furnishing of service through variously constructed rates at lower charges. The practice of the Commission over the past 21 years, as pointed out by Commissioner Webb in his dissent in the instant case, was consistent with this interpretation, permitting competitively compelled departures from the

classification in e.g. *All Freight to Pacific Coast*, 248 ICC 73, aff. *Pacific Inland Tariff Bureau v. United States*, 50 F. Supp. 376 (W.D. Wash. 1943), and cases cited, supra. We can see no difference in principle between those cases and the one before us and no sound reason for so interpreting § 1(6) as to prohibit such competitively compelled departures from classifications, within the established maxima, absent some other violation of the Act than the mere departure from the classification."

It is perfectly plain from the court's own language that the court considered Section 1(6) to be significant *only* in a maximum rate case. That is to say, the Court viewed the section as exclusively limited to supporting the Commission's maximum rate power as conferred upon the Commission in 1906.⁷ The critical importance of the issue presented to this Court is well demonstrated by the statement of the court below rejecting the Commission's interpretation of Section 1(6) as having vitality with respect to rates other than maximum rates. The court's statement, which appears in the opinion immediately following the paragraph quoted above reads (R. 44-45):

"The Commission fears that approval of these rates would be legislation on its part, apparently because it would be the final blow to classification as a control over minimum rates and a further weakening of its role as a 'giant handicapper.' Having permitted over a long period exceptional rates which actually move the vast preponderance of this traffic at rates below the class rates, it would seem that it has already effectually legislated or interpreted the modification of what it now claims was the original meaning

⁷The Hepburn Act, June 27, 1906, 34 Stat. 589, 49 U.S.C. 15.

and purpose of § 1(6). It is strange to find it boggling at this final step of so little effect on traffic actually moving under class rates.⁸ In any case, we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15(a) (3). The record discloses no violation of these sections. It would appear that the Commission here invokes § 1(6) as a means of preserving a basis for the 'value of service' concept in rate-making referred to above, in a desire to hold fast to a past which has already slipped away beyond our reach."

As the court below noted, the Commission viewed the requirement of just and reasonable classifications for ratemaking purposes as also protecting its minimum rate power. Significant in this context is the fact that the minimum rate power, 49 U.S.C. 15(1), was conferred upon the Commission in 1920 by amendment of Section 15(1),⁹ the section which also grants the maximum rate power and which specifically embraces within its terms the power to determine and prescribe just, fair, and reasonable individual or joint classifications. Obviously, just as an increase in classification might be used to defeat the maximum rate power so it is manifest that a decrease in classification might be used to defeat the minimum rate power. And if it may so be used, as the court below has held, the Com-

⁸ While the court had noted that only about one per cent of rail carload traffic in the east moved on class rates (R. 42), the Commission had found that the rates in issue represent the highest level at which the *bulk* of the New Haven's west-bound traffic would move (R. 11), and had concluded that the rates were destructive of the rate structure generally, not just of class rates (R. 15).

⁹ Transportation Act of 1920, 41 Stat. 484, 49 U.S.C. 15.

mission's regulatory tasks will be impossible of performance.

The Commission in its decision very carefully noted and explained that the term "classification" as used in Section 1(6) was broader than the specific classification used by carriers in the establishment of class rates and correctly stated that the Act requires *all* rates to be made with reference to just and reasonable classifications. That is to say the Commission recognized that the Act requires differential pricing of transportation to reflect the almost infinite variation between and among the articles and commodities which are transported in interstate commerce. Indeed, differential pricing is a necessity if the opinion of this court in *Baltimore & Ohio Railroad Co. v. United States*, 345 U.S. 146 (1953), is to have any significance. There the Court sustained an order of the Interstate Commerce Commission which required the railroads to transport certain kinds of fresh vegetables at charges which were below the computed out-of-pocket costs of such transportation, the Court holding that this was lawful if the total traffic of the railroads was sufficiently profitable to assure continued service.

It follows, of course, that if the Commission has the power to require the railroads to transport a given segment of traffic at less than cost, the Commission must likewise have the power to require the railroads to transport other traffic at rates substantially in excess of cost so that the ability of the railroads to meet the nation's needs with respect to the first category of traffic will be preserved. That is why Section 1(6) of the Interstate Commerce Act makes it "the duty of all common carriers * * * to establish, observe, and enforce just and reasonable classifications of property

for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed * * *." It is likewise why Section 2 of the Interstate Commerce Act makes it unlawful for any railroad "by any * * * device" to "charge * * * or receive from any person * * * a greater or less compensation for any service rendered, or to be rendered, in the transportation of * * * property * * * than it charges * * * or receives from any other person * * * for * * * a like and contemporaneous service in the transportation of *a like kind of traffic* under substantially similar circumstances and conditions." (Emphasis ours) It is likewise why Section 3(1) of the Act makes it unlawful for any railroad "to make, give or cause any undue or unreasonable preference or advantage to * * * any particular *description of traffic* * * * or to subject * * * *any particular description of traffic* to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." (Emphasis ours)

The Supreme Court has itself heretofore interpreted the Interstate Commerce Act as not only authorizing but requiring the Interstate Commerce Commission to see to it that the railroads maintain rates and charges which are just, reasonable, non-discriminatory, and non-preferential as between the various classes of traffic and the various classes and kinds of commodities. That was the thrust of the decision in *Ann Arbor R. Co. v. United States*, 281 U.S. 658 (1930), which held that the Hoch-Smith Resolution, 49 U.S.C. § 55, had merely restated the requirements of the Interstate Commerce Act in that regard. The Commission itself called attention to this matter in its own report accompanying its order requiring that the rates under consideration be cancelled. (R. 16)

It should be observed that the court below in discussing Section 1(6) refers to numerous decisions to show that the practice of the Commission over the past twenty-one years has been consistent with the court's "maximum rate" doctrine (R. 44). However, reference to the Commission's report will disclose that it referred to many of those same decisions and pointed out that they differed from the instant case in that there the rates at issue did not constitute departures from the just and reasonable classifications required by Section 1(6) either because they reflected an average classification or because they were higher than the rates which would otherwise apply and thereby were not destructive of those rates. (R. 13-15).

Clearly, the court below failed to perceive the special significance of Commission decisions issued in a field of the Commission's particular competence. Plainly the requirement of Section 1(6) that *all* rates, class or commodity, meet the test of reasonable classification was and is intended to protect both the maximum and minimum rate powers of the Commission. Certainly, if Congress had intended otherwise it would have so provided at the time it conferred the minimum rate power on the Commission in 1920, some ten years after having established the requirement that carriers maintain just and reasonable classifications for ratemaking purposes.¹⁰ It follows, therefore, that the publication of a rate which for all practical purposes treats as one not only both straight and mixed shipments but also virtually any kind of commodity for the purpose of determining transportation charges must necessarily violate the basic requirement of Section 1(6) that just

¹⁰ Mann-Elkins Act, June 18, 1910, 36 Stat. 544, 49 U.S.C. § 1(6).

and reasonable classifications *shall* be maintained for purposes of ratemaking.

The court below has declared that the rates in issue may not be condemned under Section 1(6) of the Act even though they constitute a departure from just and reasonable classifications (R. 44). Thus the court below judicially modified the words of the statute in plain derogation of the rule that a court must construe what Congress has written and cannot add to, subtract from, delete, or distort the words used.¹¹ Similarly it is not within the judicial function to rewrite a statute so that it will authorize what the court thinks should be authorized.¹²

The court below has tried to rationalize its departure from principle and its modification of the law as enacted by Congress by advertng to economic conditions which have changed since the law was enacted. These changed conditions were also recognized by the Commission which soundly noted that it was the province of Congress and not the Commission to make any necessary changes in the law (R. 16-17). That fundamental proposition in terms peculiarly applicable here, was well stated by the three-judge court in *Pennsylvania Truck Lines, Inc. v. United States*, 219 F. Supp. 871, 875 (W.D., Pa. 1963) where, in sustaining a decision of the Interstate Commerce Commission the Court said:

“While there may be some merit to the plaintiff’s contention that changed conditions in the transportation industry since the enactment of the Interstate Commerce Act require a reassessment of the National Transportation Policy with re-

¹¹ 62 Cases of *Jam v. United States*, 340 U.S. 593 (1951).

¹² *Story v. Snyder*, 184 F. 2nd 454 (D.C. Cir., 1950).

spect to railroads, this Court should not become the vehicle for reshaping the laws which Congress has written. The plaintiff's appeal in that regard must be to Congress itself. The complaint must be dismissed.

B. The Court Below Misinterpreted the Commission's Decision

As a corollary to its holding that the Commission should have modified the meaning of Section 1(6) to fit changed economic conditions, the court below also said that it did not view the rates in issue as being in violation of that section. To this end, the court indulged in a dissertation upon the development of class rates, commodity rates, and all-commodity rates (R. 40-44). In the course thereof the court enumerated factors considered in the classification of commodities for transportation, including value of service, and stated that the former monopoly position of the railroads allowed them to observe these factors, particularly value of service, well into this century. (R. 41).

The court concluded that departures from, i.e., violations of, just and reasonable classifications when competitively compelled do not violate the act. It endeavored to support its holding by referring to a number of Commission decisions in which all-commodity rates had been approved and saying that it could see no difference in principle between those cases and the decision of the Commission here (R. 44). Therein lies a vital deficiency in the court's decision for the decision of the Commission clearly recognized *the distinction in principle* between those earlier cases and the one at bar by pointing out that the all-commodity rates heretofore approved have generally applied on a limited number of commodities and required the mixing of two or more commodities in order to reflect the average carload rate for the commodities

covered, thereby adhering to, rather than departing from classification principles (R. 14). The Commission further observed that in those few cases where all-commodity rates not limited to mixed shipments were approved, the rates were at the same level or higher than the carload commodity rates and thereby did not represent departures from the classifications required by Section 1(6) of the Act. Importantly, the Commission noted that where all-commodity rates applicable on straight shipments would constitute departures from classification as required by the Act they have been condemned (R. 14).

Thereafter, the Commission discussed the rates here in issue, having already recognized that they range from 45 to 19 per cent of first class and constitute the highest level at which the bulk of the New Haven's westbound traffic would move. The Commission noted further that thousands of commodities are included in the adjustment without relation to classification principles and concluded that the rate proposal clearly violates Section 1(6) (R. 15).

The court, without referring to the foregoing specific findings and conclusions of the Commission, said that the Commission appears to have invoked Section 1(6) "as a means of preserving a basis for the 'value of service' concept in ratemaking * * * in a desire to hold fast to a past which has already slipped away beyond our reach."¹³ (R. 44-45) The plain significance of the decision is that the requirement that rates be made with reference to just and reasonable classifications of property can no longer be an operative standard of ratemaking because the legislation was enacted at a time when the railroads "were powerful monopolies."

¹³ The Commission decision contains no reference to the "value of service" concept.

(R. 44-45) It would be serious enough if the court below had held that the Commission misapplied the factors and criteria which go into just and reasonable classifications for it would thereby have substituted its judgment for that of the administrative agency in a field where the agency is vested with broad discretion.¹⁴ It is even more serious where the holding

¹⁴ *Alabama Great S. R. Co. v. United States*, 340 U.S. 216 (1951); *Ayrshire Collieries Corp. v. United States*, 335 U.S. 573, 592-593 (1949); and *United States v. I.C.C.*, 221 F. Supp. 584, 586-587 (D.C., 1963) where the court said:

"The fixing of railroad freight rates is a complex and intricate undertaking requiring expert knowledge and skill. It differs from the determination of rates to be charged by public utilities of other types. Most public utilities, other than those in the transportation field, deal in a single commodity or service, such as gas, electric power, telephone service, and the like. In such cases, it is necessary to calculate what income is likely to be received by the utility if the rate is fixed at a specific amount, and ascertain whether the expected earnings would result in a fair return. In the case of transportation facilities, however, rates must be established on hundreds, or possibly thousands, of different commodities. The question then becomes, in part, whether the entire rate structure comprising the sum total of the income to be realized from all shipments of these many types, will result in a fair return to the carrier. No one freight rate may be considered individually. The entire group with its innumerable ramifications must be evaluated as a whole, like a piece of tapestry composed of thousands of individual threads of various colors and hues. It is a resultant of many elements. Economic effects of particular rates on communities which they affect, and on lines of business to which they relate; the extent to which they are likely to attract shipments to transportation facilities of a specific type or draw it to competitors; the amount of charges that the traffic will bear and numerous other factors must all be weighed in determining the reasonableness of freight rates. The task comprehends much more than mathematical computations. The outcome depends on sound judgment and keen discernment based on an appraisal of the various considerations and their interrelation. Obviously strong reliance must be placed on the expertise of the regulating agency." (Emphasis added)

was, as is the case here, that the Commission may not apply the standards of Section 1(6) to rates applying on virtually any commodity in straight shipments, with only very limited exception, which the Commission found would defeat all higher rates and would thereby destroy the just and reasonable rate structure upon which all carriers must depend.

Under the holding of the court below the Commission is powerless to regulate transportation rate structures as a whole and is thereby powerless to accomplish the goals of regulation embodied in the Act and set forth in the National Transportation Policy as recognized by this Court in *Ann Arbor R. Co. v. United States*, 281 U.S. 658 (1930), and *Baltimore & Ohio Railroad Co. v. United States*, 345 U.S. 146 (1953).

**C. The Decision Below Rests Upon Plain Disregard
of Facts Found By the Commission**

The court below would set aside the Commission's conclusion that the considered rates constitute a destructive competitive practice under the National Transportation Policy by declaring that the finding is not understandable to the court and in any event could not be made under Section 15a(3) as interpreted by the same court in *New York, New Haven and Hartford R. Co. v. U. S.*, 199 F. Supp. 635 (1961), vacated by this Court in *I.C.C. v. New York, N.H. & H. R. Co.*, 372 U.S. 744 (1963).

The error of the Court below here is twofold. First, the National Transportation Policy specifies that *all provisions* of the Act shall be administered and enforced with a view to carrying out that policy. The rates in question do not present issues under Section 15a(3) for their primary genesis lies in an attempt by

the New Haven to meet the trailer-on-flatcar competition of other railroads. The issues clearly arise under Section 1(5), 1(6), 2, and 3(1). If the Act is to be construed for the first time as not permitting a finding of destructive competition except in conjunction with the resolution of issues under Section 15a(3) the departure from the explicit provisions of the Act and the National Transportation Policy can only be initiated by Congress.

The second error of the court below on the question of destructive competition is that the considered rates clearly meet the court's own test in that they are hurtful to the proponents thereof as well as to competitors. In this regard the Commission specifically found that under the considered rates the New Haven Railroad transported 4 million pounds more freight than it would have handled in their absence for added gross revenue of only \$129.00. Most assuredly, from that finding it is obvious that the considered rates result in a significant decrease in the New Haven's net revenue and thereby a deterioration in its financial position. In this context it is worthy of note that Division 2 of the Commission in its report on the proposed rates (R. 94-105, 313 I.C.C. 275) made specific note of the contention of the protestants, appellants here, that for every 30,000 pounds of traffic diverted from motor carriers by the proposed rates, 100,000 pounds are diverted from the New Haven's own higher priced box car service (R. 98, 313 I.C.C. at page 278). The evidence abundantly supports the Commission's conclusion and, bearing in mind the Commission's factual findings and the implications which logically follow therefrom, the Commission's statement of its conclusion is vastly more intelligible than is the obscure statement of the

court below. The Commission's conclusion reads (R. 15):

"The rates here under investigation, however, apply not only on mixed but also on straight shipments of numerous commodities which would otherwise be subject to higher rates. Thousands of commodities are included in this sweeping adjustment without relation to classification principles, and without regard to the destructive effect which the proposed rates would have upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. If not restricted to reasonable mixtures, such rates could, and no doubt would, break down these rate structures to the detriment of carriers and shippers alike. The evidence is clear that such result would follow approval of the proposed rates. In these circumstances, the rates must be condemned as constituting a destructive competitive practice in contravention of the national transportation policy, and also as in violation of section 1(6) of the act."

D. The Court Below Has Usurped the Congressional Prerogative of Specifying the Standards of Regulation

There can be no question but that the court below has intruded upon the administrative jurisdiction of the Commission itself. It is the Commission's function to determine the transportation needs of the country and so to regulate the carrier members of the national transportation system in terms of both operations and rates as to meet those needs. In the performance of that task the Congress has established clear standards for the Commission to follow, i.e., sections 1(5), 1(6), 2, and 15a(3), and *it is beyond the authority of the court below to declare that one of those standards may be disregarded because a rate proposal does not appear to the court to violate other standards.*

The basis for the court's declaration that the case should not have been decided under Section 1(6) (R. 46) is the theory that economic circumstances are significantly different than when Section 1(6) was enacted. But this is immaterial for it was not the function of the court below to pass upon the wisdom of the Commission's decision, and neither the Commission nor the court is authorized to change the statute. Rather, it was the function of the court to test the Commission's action against the congressional mandate. See *American Trucking Assos. v. United States, I.C.C.*, 364 U.S. 1, 15 (1960). The court below erred in reversing the Commission for the latter's refusal to disregard a specific provision of law. The court also erred in reversing the Commission for invoking the National Transportation Policy, permeating as it does the entire Interstate Commerce Act because in the court's view that policy relates only to one section of the Act.

The necessary result of the holding of the court below is to deprive the Interstate Commerce Commission of a power delegated to it by Congress. Thereby the holding would also deprive the Commission of the ability to discharge the duties imposed upon it by Congress. Plainly, the decision below must be vacated and set aside by this Court.

CONCLUSION

This proceeding presents issues of nationwide significance which are of tremendous importance to the regulation of all transportation in interstate and foreign commerce. The decision of the court below plainly lays down a new interpretation of the Interstate Commerce Act, said by the court to be made necessary by

reason of changed economic circumstances and past legislative modification through administrative decisions. Moreover, the decision of the court below clearly holds that the meaning of the Interstate Commerce Act not only may but also should be modified to fit the economic circumstances existing at the time of decision—in short, a rule by men rather than a rule by law.

WHEREFORE, the appellants respectfully pray that this Honorable Court vacate and set aside the judgment of the court below and remand the case to it with instructions to dismiss the complaint.

Respectfully submitted,

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August 25, 1964

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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 22

ALL STATES FREIGHT, INC., ET AL., APPELLANTS

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the district court (R. 39-46) is reported at 221 F. Supp. 370. The report of the Interstate Commerce Commission (R. 9-29) is reported at 315 I.C.C. 419.

JURISDICTION

The final judgment of the district court was entered on September 16, 1963 (R. 50-51). Notice of appeal was filed on November 2, 1963 (R. 51-53), and on March 30, 1964, this Court noted probable jurisdiction (R. 386).¹

¹The United States and the Interstate Commerce Commission, defendants in the proceeding below, did not appeal.

QUESTIONS PRESENTED

(1) Whether the court below erred in holding that the requirement of Section 1(6) that railroads establish reasonable classifications of property for rate-making purposes is satisfied by the maintenance of class rates, and does not apply to lower commodity rates at which most freight moves.

(2) Whether the court below erred in holding that the National Transportation Policy prohibits the Commission from considering the relative value of the transportation service in determining the lawfulness of rates.

STATUTES INVOLVED

Section 1(4) of the Interstate Commerce Act, 49 U.S.C. § 1(4), provides, in part:

It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; * * *

Section 1(5) of the Act, 49 U.S.C. § 1(5), provides:

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Section 1(6) of the Act, 49 U.S.C. § 1(6), provides, in part:

It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, * * * and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

The National Transportation Policy, 49 U.S.C. preceding § 1, provides, in part:

It is hereby declared to be the national transportation policy of the Congress * * * to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices * * *

STATEMENT

The New Haven Railroad, and certain other rail carriers serving New England, published reduced all-commodity rates from specified New England origins to Chicago and St. Louis. The Commission permitted them to become effective on July 16, 1959. The rates apply indiscriminately to all articles named in the railroads' Uniform Freight Classification, with certain designated exceptions; they are available either for straight carloads (*i.e.*, shipments of a single commodity) or mixed carloads; they are scaled to weight minima ranging in 10,000-pound intervals from 20,000 pounds to 70,000 pounds; and they vary in level from 45 percent (for 20,000-pound shipments) to 19 percent (for 70,000-pound shipments) of the first class rate.

Upon protest, these and related rates were set down for investigation. The hearing examiner found them not shown to be just and reasonable, stating (R. 84) that "since these rates, dropping as low as 19 percent of first-class, are not made subject to a mixing rule, and are made without regard to the value of the articles transported or other usual transportation considerations, the examiner finds, and so concludes, that they tend to vitiate, and thereby undermine, the uniform freight classification in violation of section 1(6) of the [Interstate Commerce] act, and would thereby inevitably result in jeopardizing the entire rate structure."

Division 2 of the Commission reached a contrary conclusion, although Commissioner Freas, dissenting, declared (R. 103):

Although special circumstances may provide justification, "all-freight" rates applying on straight shipments are in my opinion ordinarily highly undesirable.

Here the desire to meet competition is relied upon to justify the proposal. Yet the record is clear that rates as low as those proposed are not necessary to meet the competition.

The protestant, Eastern Central Motor Carriers Association, Inc., joined by several motor-carrier intervenors,² petitioned the full Commission for re-

² All States Freight, Inc., Chicago Express, Inc., Eastern Express, Inc., Long Transportation Co., W. L. Mead, Inc., Ramus Trucking Line, Inc., Roadway Express, Inc., Spector Freight System, Inc., The Western Express Co. and Wilson Freight Forwarding Co., by order of the Commission entered June 9, 1961, were granted leave to intervene.

consideration of the Division 2 report and order, and on December 28, 1961, the Commission entered the report and order here under review. With three members dissenting, the Commission reached the same conclusion as had the hearing examiner and found the rates to be unjust and unreasonable. It stated (R. 15):

The rates here under investigation * * * apply not only on mixed but also on straight shipments of numerous commodities which would otherwise be subject to higher rates. Thousands of commodities are included in this sweeping adjustment without relation to classification principles, and without regard to the destructive effect which the proposed rates would have upon just and reasonable rate structures necessary to the maintenance of an adequate national transportation system. If not restricted to reasonable mixtures, such rates could, and no doubt would, break down these rate structures, to the detriment of carriers and shippers alike. The evidence is clear that such a result would follow approval of the proposed rates. In these circumstances, the rates must be condemned as constituting a destructive competitive practice in contravention of the national transportation policy, and also as in violation of section 1(6) of the act.

The three-judge district court set aside the Commission's order and enjoined its enforcement (R. 50-51). It held that the Commission's decision rested on an erroneous interpretation of Section 1(6) of the Act (which requires railroads "to establish, ob-

serve, and enforce just and reasonable classifications of property for transportation"); that the purpose of that section was "to protect shippers by controlling the maximum charges for transportation of commodities"; that this purpose "is fulfilled by the maintenance in being of class rates even though competitive conditions lead to the furnishing of service through variously constructed rates at lower charges"; and that there is "no sound reason for so interpreting § 1(6) as to prohibit such competitively compelled departures from classifications, within the established maxima, absent some other violation of the Act than the mere departure from the classification" (R. 44, 221 F. Supp. at 374).

The court held, moreover, that the Commission had invoked Section 1(6) "as a means of preserving a basis for the 'value of service' concept in ratemaking * * *, in a desire to hold fast to a past which has already slipped away beyond our reach." (R. 45.) Whatever may have been the utility of this factor in transportation pricing "in the development of railroads and commercial and agricultural enterprises in the undeveloped West at a time when the existing railroads were powerful monopolies", continued the court, "[t]he continuing application of the principle is * * * contrary to the letter and spirit of the National Transportation Policy." *Ibid.*

ARGUMENT

INTRODUCTION AND SUMMARY

A three-judge district court has set aside an order of the Interstate Commerce Commission cancelling the New Haven's all-commodity rates on the ground that

they contravene Section 1(6) of the Act (requiring that carriers maintain "just and reasonable classifications of property for transportation"). A number of motor carriers which compete with the New Haven have appealed to this Court. The Commission, however, entertaining some doubt as to the adequacy of its findings, elected not to appeal; instead, it reopened the proceedings for further consideration and hearing. The United States also concluded that an appeal would be inappropriate in the circumstances. This brief is filed to advise the Court of the government's views on the merits.

We submit that the court below erred in holding that Section 1(6) is relevant only to the validity of "class" rates, and has no application to "commodity" rates. Today the great bulk of the nation's carload tonnage moves on commodity rates—rates applicable to particular commodities and to particular points of origin and destination—rather than class rates. The court below held, in effect, that a rail carrier fulfills its duty under Section 1(6) merely by maintaining on file a satisfactory schedule of class rates, even though those rates are little used; and that while the commodity rates, which *are* used, must comply with other provisions of the Act, they need not conform to the requirement of "just and reasonable classification." As we show in Point I, this result is warranted neither by the language nor by the history of the Act and is contrary to long-standing administrative practice.

³ Pending the resolution of the case in this Court, the Commission's further hearing has been postponed.

Even before the enactment of Section 1(6), as part of the Mann-Elkins Act of 1910, the Commission regularly applied classification standards in passing on commodity rates. Since the declared purpose of Section 1(6) was to confirm the Commission's authority in the area of classification, Congress impliedly ratified the existing practice as to commodity, no less than class, rates. Subsequent to 1910, the Commission has continued to insist upon just and reasonable classifications in commodity-rate cases. And the standards it has applied in dealing with all-commodity rates represent no departure from this settled practice.

The court further erred, we believe, in suggesting that the continued application of the value-of-service principle as a criterion in classifying freight and designing rates would be contrary to the letter and spirit of the National Transportation Policy. As we develop in Point II, while the rise of intermodal competition necessitates a somewhat more flexible application of the value-of-service concept, it by no means compels its abandonment. Nor does the National Transportation Policy outlaw this familiar rate-making criterion. Indeed, several provisions of the Act affirmatively authorize the Commission to take into account the value of the commodities to be shipped, as well as other factors bearing upon the elasticity of demand for the carrier's service and the effect of a given rate change upon the carrier's overall revenue requirements.

The appellant motor carriers apparently take the position that an all-commodity rate which is appli-

cable to straight shipments, as well as mixed shipments, and which would supersede virtually all of the carrier's existing commodity and class rates, necessarily contravenes Section 1(6). They request, therefore, that the case be remanded to the court below with instructions to dismiss the complaint. We do not agree that an all-commodity rate having the above characteristics is *per se* in violation of Section 1(6). And the Commission is doubtful as to the adequacy of its findings to support the conclusions (a) that the proposed classification is not a "just and reasonable" one and (b) that the requested rate adjustment would constitute a destructive competitive practice. Accordingly, the government suggests that the cause be remanded to the Commission for additional findings relative to these issues.

I. SECTION 1(6) OF THE INTERSTATE COMMERCE ACT REQUIRES REASONABLE CLASSIFICATIONS OF FREIGHT IN THE MAKING OF COMMODITY RATES, NO LESS THAN IN THE MAKING OF CLASS RATES

Section 1(6) of the Interstate Commerce Act requires railroads "to establish, observe and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed."⁴ The court below held that this statutory mandate is applicable only for the purpose of constructing "class" rates and has no bearing on the validity of "commodity" rates such as those involved here. That restrictive interpretation, we submit, has no basis either in the language or the history of the

⁴ Section 216(b) imposes a comparable duty upon motor carriers.

statute, and is at odds with long-standing administrative practice.

The distinction between "class" rates and "commodity" rates is fundamental to an understanding of this case. Class rates are the foundation of the railroad rate structure; they apply to all articles of commerce in the absence of commodity rates or other rate concessions. Flood, *Traffic Management* 138 (1963); Morton and Mossman, *Industrial Traffic Management* 37 (1954). The categories to which they relate are established by the railroads' Uniform Freight Classification, which organizes some 8,000 commodities into 31 classes or "ratings." For each of these groupings a companion tariff prescribes the appropriate "class" rate, ranging from 13 percent (class 13) to 400 percent (class 400) of the first class rate (class 100). Commodities are assigned to these categories on the basis of a wide variety of characteristics bearing upon the cost of, and also the demand for, the transportation service.⁵

⁵ These transportation characteristics were listed by the Commission as follows, in *Motor Carrier Rates in New England*, 47 M.C.C. 657, 660-61:

The characteristics of the commodities which must be considered in fixing classification ratings are generally as follows:

1. Shipping weight per cubic foot.
2. Liability to damage.
3. Liability to damage other commodities with which it is transported.
4. Perishability.
5. Liability to spontaneous combustion or explosion.
6. Susceptibility to theft.
7. Value per pound in comparison with other articles.
8. Ease or difficulty in loading or unloading.
9. Stowability.

From the earliest days of railroad rate-making, however, the carriers have also utilized rates which are applicable only to specific commodities and to movements between specifically named points. These "commodity" rates are generally somewhat lower than the class rates which would otherwise apply and are determined "with reference to all the conditions surrounding the transportation of the particular articles between the particular points." *The Mississippi River Case*, 28 I.C.C. 47, 63; *Railroad Commission of Louisiana v. A.H.T. Ry. Co.*, 48 I.C.C. 312, 369. While the original purpose of these rates was to encourage the movement, in large quantities, of low-rated bulk commodities such as coal and grain, they have increasingly served the railroads as a competitive pricing device to prevent diversion of many types of traffic to private or for-hire motor carriage. As a

10. Excessive weight.
11. Excessive length.
12. Care or attention necessary in loading and transporting.
13. Trade Conditions.
14. Value of service.
15. Competition with other commodities transported.

Accord: *Class Rate Investigation*, 1939, 262 I.C.C. 447, 508; *Investigation and Suspension Docket No. 76*, 25 I.C.C. 412, 472-73 and cases cited therein; *Procter & Gamble v. C.H. & D. Ry. Co.*, 9 I.C.C. 440, 482. All of these transportation characteristics are taken into consideration in rating a particular freight, and no one of them is controlling. *Vacuum Cleaner Manufacturers Assn. v. Atchison, T. & S.F. Ry. Co.*, 276 I.C.C. 783, 792; *Nashville Traffic Bureau v. L. & N. R.R. Co.*, 68 I.C.C. 623, 626; *McCroory Stores Corp. v. Director General*, 53 I.C.C. 421, 424.

consequence of the rapid growth of intermodal competition, by far the major portion of the nation's carload tonnage now moves on commodity rates; relatively little traffic still travels on class rates (R. 42, 221 F. Supp. 373; see Van Metre, *Industrial Traffic Management* 28 (1953)).

The court below held that a rail carrier fully discharges its duty under Section 1(6) merely by maintaining on file a satisfactory system of class rates, albeit those rates are seldom used and exist primarily on paper. It ruled, in short, that while the commodity rates must comply with other provisions of the Act—i.e., must be just and reasonable, non-discriminatory, etc.—they need not conform to the classification requirements of Section 1(6).

This construction draws no support from the language of the statute, which speaks in unqualified terms of "classifications of property * * * with reference to which rates * * * are or may be prescribed," and which prohibits and declares unlawful "every unjust and unreasonable classification." Nor is the court's conclusion required by the meaning of the word "classification." Classification is simply the pragmatic process by which articles of commerce are compared, grouped, and differentiated for the assessment of transportation charges. As such, it is an essential element in all rate-making. Colquitt, *The Art and Development of Freight Classification* 20 (1956) Sharfman, *The Interstate Commerce Commission*, III-B, 476-477 (1936). It matters not whether the articles to be classified are brought together within a group comprising a single commodity, many commodities, or, as here, all commodities; nor is

it material whether the group takes a commodity rate, a class rate, or an all-commodity rate. In all of these cases Section 1(6) demands that differences and similarities between and among the articles of shipment, whether in their transportation characteristics or in the circumstances attending their movement, must be reasonably reflected in the rates.

The court's unnatural reading of Section 1(6) is refuted, rather than sustained, by the legislative history. The purpose of this provision, enacted as part of the Mann-Elkins Act of 1910, was to confirm the authority of the Commission to pass upon the justness and reasonableness of a carrier's classification of property for transportation. S. Rep. 355, 61st Cong., 2d Sess. 4 (1910), H. Rep. 923, 61st Cong., 2d Sess. 4 (1919); 45 Cong. Rec. 4578, 5142, 6900, 8382 (1910). Congress was undoubtedly aware that the Commission had long exercised such authority in passing upon commodity rates, repeatedly insisting that (competitive conditions being equal) similar articles take the same commodity rate and dissimilar articles take different commodity rates. Thus, in the early landmark case of *Coxe Brothers & Co. v. Lehigh Valley RR. Co.*, 4 I.C.C. 535, 560:

Ordinarily there is no better criterion for reasonable charges than that which is in proportion to the service rendered; and if the cost and expense of the carrier was the only test of a reasonable charge the claim might well be made that all coals should be classed together as one freight and be subject to the same transportation charge.

Carriers in making separate classifications, or rates for different coals, take into considera-

tion not only the expense of transportation, but the value of the freight and worth of the transportation to the shipper; the exceptional qualities which fit the most valuable anthracite for domestic and special uses and cause its large consumption in less distant markets; the shorter distance from the mines to the principal markets rendering the transportation proportionally more expensive, and the necessity for so apportioning the transportation charges between the anthracite of different sizes and values that the more valuable may bear the greater charge.

Conversely, in *Stowe-Fuller Company v. Pennsylvania Co.*, 12 I.C.C. 215, 220, the Commission refused to countenance the assignment of distinct rates to three sub-classes of brick, pointing out that "[c]lassification must be based upon a real distinction from a transportation standpoint; and we can find no such distinction between these three classes of brick, which are made of the same material and come out of the same kiln, as justifies a difference in rates." And in several other commodity-rate proceedings prior to 1910, the Commission considered the reasonableness of the carrier's proposed freight classification. *Metropolitan Paving Brick Co. v. Ann Arbor R.R. Co.*, 17 I.C.C. 197, 201-202; *Duluth Shingle Co. v. Duluth, S.S. & A. R. Co., et al.*, 10 I.C.C. 489, 501; *McGrew v. Missouri Pac. Ry. Co.*, 8 I.C.C. 630, 641; *In re Excessive Freight Rates, etc., on Food Products*, 4 I.C.C. 48, 67-68. In enacting Section 1(6), Congress impliedly approved the settled practice.

Since the enactment of that section, the Commission has consistently scrutinized the reasonableness of

freight classifications in passing upon commodity rates. Its rationale for doing so was perhaps best stated in *Rates on Lumber and Lumber Products*, 52 I.C.C. 598, 602:

A classification of given articles is effected by a determination of their rate relationship. In a measure this is true when articles are grouped together under a commodity description in a commodity tariff as well as when they are included in official, western, or southern classification. In each case classification factors should be considered in determining what articles should be grouped. The groupings in the classifications, of course, have much wider application and, beside providing that certain articles should take the same rates, also provide that other articles should take higher or lower rates, as the case may be.

In response to the carriers' contention that it would be inappropriate for the Commission to concern itself with the relationships of the affected items of traffic, since they moved predominantly on commodity rates, rather than on class rates, the Commission declared (52 I.C.C. at 604):

While it is true that commodity rates are generally regarded as designed to take care of particular movements, the circumstances and conditions surrounding which require a departure from the normal adjustment as provided by the classifications and the class rates, it is also true that as to many commodities the movement as commodity rates is to such an extent predominant that the class rates can no longer be regarded the normal adjustment. When that is the case, it is desirable to ascertain whether or

not a standardization of rate relationships such as the classifications were intended to afford can again be effected, upon a new basis different from that found inadequate in the existing classifications. [Emphasis added.]

After considering the various transportation characteristics, the Commission promulgated the appropriate groups for the commodities in question, concluding (52 I.C.C. at 628) that "in making commodity rates, the rate-maker must observe the law which requires that rates shall be reasonable in and of themselves, and also reasonable by relation." For later views to the same effect, see *Transit of Furfural Residue at Various Points*, 322 I.C.C. 794, 806, and cases cited therein; *Bunge Corp. v. Ann Arbor R. Co.*, 283 I.C.C. 617, 627; *Forrestal v. Abiline & S. Ry. Co.*, 263 I.C.C. 457; *Minneapolis Hide & Tallow Co. v. Chicago & N.W. Ry. Co.*, 258 I.C.C. 355, 360-61; *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 68 I.C.C. 213, 217.

The Commission's approach in dealing with all-commodity rates—i.e., charges applicable to shipments of all goods (with designated exceptions) between specific points—represents no departure from sound classification principles. This type of rate was introduced in the early 1930's to enable shippers to put together a full carload shipment of various commodities—commodities which, if priced separately, would have been subject to the relatively higher rates applicable to less-than-carload quantities. Thus, the all-commodity rates made available to shippers the cost savings realized by the carrier through its ability

to transport given tonnage in a single fully loaded boxcar, instead of several partly loaded boxcars. In keeping with this purpose, the Commission has generally restricted the application of all-commodity rates to shipments of mixed articles and even then has insisted that they reflect the transportation characteristics of the predominant component of the mixture.⁶ On those few occasions on which it has approved all-freight rates applicable to straight-carload shipments (shipments of a single commodity) it has specifically noted that the rates would not displace the class or commodity rates otherwise applicable, either because the latter rates were at a lower level or because the particular articles did not move in carload quantities.⁷ Thus, in no instance has the Commission sanctioned an all-freight charge which, like the ones at issue here, would have undercut the ex-

⁶ Accord, *Freight, All Kinds, from Chicago to Columbus, Indiana*, 308 I.C.C. 517, 519; *Freight, All Kinds, Between Buffalo and Detroit*, 303 I.C.C. 63, 64; *Freight, All Kinds, from Toledo, Ohio, to Chicago, Illinois*, 302 I.C.C. 751, 752; *Merchandise, Chicago and Cincinnati, Indianapolis*, 64 M.C.C. 791, 797; *Various Commodities from the Twin Cities to Iowa*, 63 M.C.C. 663, 666; *Washing Machines and Merchandise, Dennis Truck Line*, 53 M.C.C. 441, 447.

⁷ *All Freight to Pacific Coast*, 248 I.C.C. 73, 81, upon which the court below chiefly relied, was such a case. For while the all-commodity rates there approved were applicable to straight shipments, as well as mixed shipments, the Commission explicitly noted (at p. 87) that the proposed rates were no lower than the existing carload rates for the individual commodities and that this class of merchandise was not ordinarily in carload quantities (at p. 75). See also, *Freight in General From Colorado to Utah and Idaho*, 253 I.C.C. 219, 220; *All Freight From Butte, Mont., to Spokane, Wash.*, 251 I.C.C. 291, 295.

isting class or commodity rate structure; indeed, it has often condemned such rates.*

To be sure, any all-freight rate cuts across ordinary commodity classifications, in that it makes the same rate available for combinations of high-rated articles and for combinations of low-rated items alike. But so long as all-commodity rates are tailored to their legitimate purpose—that is, are confined to reasonable mixtures, adhere closely to the average or representative carload rate for the items covered, and therefore supplement, rather than subvert, the rate structure as a whole—they may fairly be deemed to constitute what the Commission described as a “reasonable separate category of classification” (R. 15).

In contrast, the rates at issue here would apply on straight as well as mixed shipments and would sweep within their ambit thousands of commodities, the great majority of which would otherwise move at higher carload commodity and class rates. Unlike the appellant motor carriers, we do not say that such rates cannot in any circumstances satisfy the standard of “reasonable classifications” laid down by Section 1(6). They are, however, radically different from any which the Commission has approved in the past and only in extraordinary circumstances could

* *All Freight Between Portland and Seattle*, 238 I.C.C. 729, 733-734; *Freight, All Kinds, Kansas City, Mo.-Kans. to Nebraska*, 310 I.C.C. 321, 325; *All Freight, Straight Carloads, to and from the South*, 258 I.C.C. 579, 581; *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623, 633; *All Freight Between Harlem River, N.Y., and Boston*, 234 I.C.C. 673, 675; *Freight Forwarding Investigation*, 229 I.C.C. 201, 251, 256, affirmed, 232 I.C.C. 175.

be shown to constitute "just and reasonable classifications."

II. IN APPLYING SECTION 1(6) THE COMMISSION MAY APPROPRIATELY TAKE INTO ACCOUNT VALUE-OF-SERVICE CONSIDERATIONS

In addition to ruling that Section 1(6) was inapplicable to this case, the court suggested that the Commission could in no event rely upon so-called value of service principles. It stated (at 44-45):

It would appear that the Commission here invokes § 1(6) as a means of preserving a basis for the "value of service" concept in ratemaking referred to above, in a desire to hold fast to a past which has already slipped away beyond our reach.

This "value of service" principle was useful in the early years of the Interstate Commerce Act in requiring the more prosperous East to assist in the development of railroads and commercial and agricultural enterprises in the undeveloped West at a time when the existing railroads were powerful monopolies. In his opinion in *New York, New Haven & Hartford RR v. United States*, 199 F. Supp. 635, 642 (1961), vacated 372 U.S. 744, Judge Hincks described the value of service concept as among the "official discriminations, hallowed and encrusted by time and inertia (which) now pervade the rate structure." The continuing application of the principle is, however, contrary to the letter and spirit of the National Transportation Policy * * *.

It is not clear whether these remarks were intended merely to buttress the holding that classification standards are inapplicable to commodity rates, or

whether they were also meant to serve as the basis for an alternative holding that the proposed rates would not violate Section 1(6) even if it were applicable. In any case, the Commission believes that the court's strictures as to the relevancy of value-of-service would seriously hamper it both in its administration of Section 1(6) and in its exercise of the minimum rate power. Accordingly, in light of our suggestion that this case should be remanded to the Commission, we think it important to address ourselves to the court's comments. We submit that its sweeping condemnation of the value-of-service concept is unwarranted and that neither the rise of intermodal competition nor any provision of the Act requires the abandonment of this rate-making criterion.

1. Before turning to the applicable statutory provisions, it will be helpful to state clearly what the value-of-service concept entails. "Value of service" has been variously defined as a measure of the elasticity of the demand for the carriers' services (Way, *Elements of Freight Traffic* 123 (1956)); as "the highest charge that can be levied without preventing a shipment from moving" (Locklin, *Economics of Transportation* 144 (5th Ed. 1960)); and as an index of the shipper's "willingness to ship via a given mode at different line-haul rates" (Senate Commerce Committee, *National Transportation Policy* 409, S. Rep. 445, 87th Cong., 1st Sess. (the Doyle Committee Report)). In short, it is a rate-making principle which focuses upon demand rather than cost, and which requires that the rates for each class of traffic be fixed with an eye to "what the traffic will bear." Traditionally, the value

of a transportation service was thought to be a direct function of the value of the commodity to be shipped; indeed, the two "value" concepts were often treated as synonymous. Thus it has long been a truism that, other things being equal, articles of high value take a higher rate than those of lesser value. This "discrimination" is sometimes rationalized on the ground that the shipper of "diamonds" derives a more valuable benefit from the carriage than does the shipper of an equal weight of "coal." The true justification, however, is that the transportation charge for an expensive article, even when very high, is so small in relation to the market price of the article at destination, that it does not appreciably restrict the sale of the commodity or, therefore, the movement of the traffic (i.e., the demand for the transportation service). Conversely, there are many low-priced commodities (coal, grains, etc.) which will not move at a rate high enough to cover the fully distributed costs of transporting them. Thus, if the railroads are to operate profitably, they must exact from the high-rated traffic a disproportionate contribution to their overhead burden, and to that end must charge such traffic a rate substantially in excess of the fully distributed costs of the transportation.

The growth of intermodal competition has, of course, made it increasingly difficult for the railroads to command this contribution from high-rated traffic. In addition, it has highlighted certain implications of the value-of-service concept which tended to be obscured in the days when railroads as a class enjoyed a transportation monopoly. Traditionally, for exam-

ple, there was no occasion to differentiate between the value of transportation generally (to the shipper of a given commodity) and the value of a particular carrier's service. It has now become clear that while the maximum charge at which a shipper will prefer transportation to no transportation may depend chiefly upon the price of the commodity to be shipped, he will place no higher "value" upon the service of a particular rail carrier than the price at which he can obtain an alternative service of comparable quality. Thus, Commission approval of rail-rate adjustments designed to meet the competition of motor carriers is not so much a departure from value-of-service formulae as a recognition that the relative value of rail service is declining.

Similarly, with the development of motor-carrier competition, and the attendant increase in the elasticity of demand for rail service, it has become evident that a competitive rate reduction for high-rated traffic, though decreasing the carrier's return per transportation unit, may generate enough additional volume to produce an increase in the overall net revenues derived from the traffic as a whole. Such an adjustment would be entirely in keeping with the objectives of the value-of-service approach, even though it might result in a lower rate for some articles than for others of equal value.

The point to be stressed is that the competitive considerations which have gained prominence in recent years, far from compelling the abandonment of the value-of-service principle, are themselves germane to its proper application. Nor does the pervasiveness of

intermodal competition make it any less important, in applying Section 1(6), to insist that differences in the transportation characteristics of various commodities be reflected in their classification for rate purposes. Indeed, the degree to which the movement of any commodity is affected by truck competition is itself one of the transportation characteristics which differentiates that commodity from, or likens it to, others. Seldom does motor-carrier competition have a uniform impact upon all commodities moving between specified points. Hence a railroad cannot justify an across-the-board reduction of all its rates merely by demonstrating that the reduction is competitively required as to *some* of its traffic. Still less can it defend on those grounds the displacement of its entire rate structure by a single all-commodity rate such as the one involved here. In each case the Commission must examine and compare the circumstances attending the movement of the particular commodities in question in order to determine the proper relationship between the rates for those commodities.

2. In light of this analysis, we turn to the lower court's conclusion that continued application of the value-of-service concept is "contrary to the letter and spirit of the National Transportation Policy" (R. 45). Adopted as part of the Transportation Act of 1940, the National Transportation Policy (49 U.S.C., preceding § 1) requires that each mode of transportation be permitted to assert whatever "inherent advantages" of cost or service it may possess. *Schaffer Transportation Co. v. United States*, 355 U.S. 83. The same policy is expressed more explicitly in Sec-

tion 15a(3), one of the 1958 amendments to the Act, which provides in part that "Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act." See *Interstate Commerce Commission v. New York, New Haven & Hartford Railroad Co.*, 372 U.S. 744. Those provisions do not reflect in any way upon the validity of the value-of-service principle. They merely establish that a proposed rate reduction *which benefits the proponent*, and does not deprive any competing mode of an inherent advantage of its own, may not be disallowed merely to protect the traffic or the rate structure of another form of carriage. For if "a carrier is prohibited from establishing a reduced rate *that is not detrimental to its own revenue requirements* merely because the rate will divert traffic from others, then the carrier is thwarted from asserting its own inherent advantages of cost and service" [emphasis added]. *New Haven Railroad, supra*, 372 U.S. at 759. But value-of-service has nothing to do with the protection of "other" carriers; its purpose, rather, is to safeguard the rate structure and the revenue-earning capacity of the proponent carrier itself. A rate adjustment which genuinely asserts an "inherent advantage" of the proponent, and would enable it to obtain from the traffic in question a more adequate contribution to its overhead burden, would be wholly consistent with the value-of-service concept. Conversely, the only rate reductions inconsistent with it are those which *injure* the proponent in that they fail

to generate enough additional volume to offset the revenue loss per unit of traffic; and such a reduction could scarcely be viewed as the assertion of an "inherent advantage."

That the "inherent advantage" factor is consistent with value-of-service rate-making is clearly indicated by remarks of Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce and Foreign Commerce, in the course of the debates on the Transportation Act of 1940. Senator Wheeler stated (86 Cong. Rec. 11290):

Let us suppose, for example, a situation where competing railroads, coast-wise steamship lines, and trucks are all maintaining, to their own and shippers' satisfaction in general, a comparatively high level of freight rates on various packaged goods of high value, and some carrier, for the sake of a temporary advantage, undertakes to cut these rates. If this must be allowed, ultimately all the competing rates will be reduced and a hole created in carrier revenue which may make it necessary to increase rates on traffic less able to stand the burden. We think that it should not be allowed, and that the Commission should be in a position to prevent such a train of events by exercise of its authority over the minimum rates.

Moreover, several provisions of the Interstate Commerce Act affirmatively sanction the use of value-of-service. Thus, the Hoch-Smith Resolution (49 U.S.C. 55), adopted in 1925 and still in effect, directs the Commission, in making necessary changes and adjustments in the structure of carrier rates, to "give due regard, among other factors, to the general and comparative levels in market value of the various classes

and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation." See *Ann Arbor R. Co. v. United States*, 281 U.S. 658, 664, 667.

Similarly, Section 15a(2) (49 U.S.C. 15a(2)) provides that "the Commission shall give due consideration, among other factors, to *the effect of rates on the movement of traffic* by the carrier or carriers for which the rates are prescribed; * * * and to *the need of revenues*, sufficient to enable the carriers, under honest, economical, and efficient management to provide such service." [Emphasis added.] That provision, originally enacted in 1933, was given its present form by the very 1940 legislation which also articulated the National Transportation Policy.

And Section 15a(3)—the same provision which prohibits the holding up of a rail carrier's rates to protect the traffic of another mode of transportation—also directs the Commission, in exercising its minimum rate power, to "consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable." Thus, while forbidding the Commission to engage in "umbrella rate-making" or to act as a "giant handicapper" (see *New Haven, supra*, 372 U.S. at 758), Section 15a(3) affirmatively admonishes it to take into account the elasticity of demand for the railroad's own services, and hence, by implication, the impact of any rate change upon its net revenues from the traffic in question.

We note, finally, that the continuing validity of the value-of-service concept was recognized by this Court

both in *King v. United States*, 344 U.S. 254, 264 where it held that the Commission may give weight to passenger revenue deficits in prescribing freight rates sufficient to meet over-all revenue needs, and in *B. & O. R. Co. v. United States*, 345 U.S. 146, 148, holding that the Commission could prescribe noncompensatory rates on certain vegetables where there was no claim that "the challenged rates will make any one of the complaining railroads operate its entire business at a loss, or even carry all fresh vegetables at a loss."

In the long run, competitive pressures, chiefly those exerted by unregulated motor carriers, may force the rates of regulated carriers, both rail and motor, to a level at (or occasionally even below) fully distributed cost. It scarcely follows, however, that the Commission must immediately adopt cost as the sole criterion of reasonable rates and classifications.⁹ What is

⁹ Even the most outspoken critics of the traditional concepts of rate-making, while maintaining that "regulatory action to maintain the present value-of-service rate structure is clearly undesirable for both the carriers and the consuming public," do not advocate "the complete elimination of price discrimination [value-of-service rate-making]." Meyers, et al., *The Economics of Competition in the Transportation Industries* 188 (1960). See Williams, *Transportation Prices: Their Initiation and Regulation*, 50 Va. L. Rev. 377, 408 (April 1964); Meyer, *Competition, Market Structure and Regulatory Institutions in Transportation*, 50 Va. L. Rev. 212, 229-230 (March 1964). A recent report to Congress on this issue concluded that "the role of value of service in rate-making needs to be re-evaluated * * * [T]he growth of competition raises very difficult questions concerning the importance of value of service factors and the degree to which they should and can be taken into account." Senate Commerce Committee, *National Transportation Policy*, S. Rep. 445, 87th Cong., 1st Sess., 416 (the Doyle Committee Report).

needed, rather, is an "orderly transition from a justifiable past practice to one that recognizes and gives effect to the exigencies of the present." See statement of J. M. Johnson, Acting Chairman of the Commission, Hearings on H.R. 6141 before a Subcommittee of the House Commerce Committee, 84th Cong., 2d Sess., 261 (1956). In the absence of Congressional action, the problem of accommodating the traditional method of pricing transportation services to the competitive conditions which now pervade the transportation industry is one for the Commission, not the courts.

3. We have shown that value of service continues to be an important factor in the classification of freight, the establishment of proper rate relationships, and the determination of appropriate minimum rate levels. It may be argued, however, that an all-commodity rate—even one which applies to straight carloads and undercuts all existing commodity rates—is not *necessarily* in derogation of Section 1(6). Suppose, for example, that a proponent railroad were able to show that competing motor carriers, regulated or unregulated, had established a rate much lower than its own and applicable indiscriminately to all commodities; and that the competitive considerations which necessitated the reduction as to any one commodity were paralleled by similar considerations as to every other. In such a situation, the Commission might be urged to conclude that variations among the commodities in other transportation characteristics (*e.g.*, price, density, cost of handling, etc.) were overshadowed by the single feature all had in common: the

magnetic attraction exerted upon each of them by the motor carrier's all-commodity rates.

There is some evidence of this type in the present case. The New Haven attempted to show that its proposed all-commodity rates are necessary to meet the intense competition offered by the Plan III TOFC (trailer-on-flat-car, or "piggy-back") rates instituted in recent years by other Eastern railroads. Those rates cover the movement between rail ramp yards of flat cars carrying one or two trailers, owned or leased by the shippers; and are based on a flat charge per trailer, irrespective of its contents (R. 61-62). To be sure, the TOFC rates, unlike those proposed by the New Haven, are subject to a mixing rule requiring that the lading consist of at least two commodities, no one of which shall exceed 60 percent of the total volume of the lading. But the New Haven argues that no such mixing rule can feasibly be applied to its proposed all-commodity rates if they are to attain competitive parity with the TOFC rates. The TOFC mixing rule, they point out, is satisfied whenever two straight trailerloads, each containing a different commodity, are tendered at the same loading platform under a single bill of lading, even though they may be consigned by different shippers and destined for different consignees (R. 62). We intimate no view as to the merits of these contentions or as to whether the evidence adduced by the New Haven might suffice to vindicate the proposed classification. This question is not one which the Court should be called upon to consider in the absence of findings by the Commission, and since the Commission did not address itself to these considerations in its original order, it

should be given the opportunity to do so upon remand.¹⁰

The Commission might also deem it appropriate upon remand to consider whether the proposed classification is sufficiently discriminating with respect to those transportation characteristics which go to the cost, rather than value, of the transportation service (*e.g.*, density, cost of handling, liability for damage, perishability, etc.). The court below pointed out (R. 43-44) that the rate in issue "is not what the layman would call 'all-commodity' * * *. [I]t is graduated according to minimum weight per car, denser items thus paying less per hundred pounds as has always been true; it excludes perishables, easily damaged goods, explosives, and other such goods whose cost of handling might be extreme; it applies only to freight westward; and there are other exclusions on basis [*sic*] of cost of shipment and handling." We doubt that these relatively few exclusions could alone make "reasonable" the inclusion of several thousand different commodities in a single rate category. Again, however, this is a matter not discussed in the Commission's report; to the extent that cost factors may be relevant even in the competitive circumstances here presented, the Commission should have an opportunity to make appropriate findings upon remand.

Finally, it would be open to the Commission upon remand to consider the validity of the proposed rates

¹⁰ In that connection, the Commission may consider the changed circumstances which now enable the New Haven to meet TOFC competition by offering its own TOFC service. At the time the rates at bar were filed, the New Haven was unable to offer such service on those routes because of various technical obstacles, which were removed by the end of 1959 (R. 11).

under other provisions of the Act, and, in particular to determine whether they constitute a "destructive competitive practice" within the meaning of the National Transportation Policy. This issue was touched upon in the order set aside by the court below. There the Commission concluded (R. 15) that, since the proposed rates would apply to thousands of commodities "without relation to classification principles, and without regard to the destructive effect * * * upon just and reasonable rate structures" and would "break down these rate structures to the detriment of carriers and shippers alike," they "must be condemned as constituting a destructive competitive practice in contravention of the national transportation policy * * *." Appellant motor carriers contend that this holding constitutes a self-sufficient ground for disallowing the rates and was fully supported by the Commission's further finding, elsewhere in the report (R. 12), that in the period during which its all-commodity rates were in effect, the New Haven "moved over 4 million pounds of additional traffic in return for \$129 in added revenue. This represents less than one-third of a cent in revenue for each additional 100 pounds of traffic moved." Thus, the motor carriers argue, "[t]he unchallenged findings of the Commission were that the considered all-freight rates will reduce rather than increase the net revenues of the proponent railroads * * * constituting thereby the very type of destructive competitive device which was condemned by the Supreme Court in *United States v. New York, New Haven & Hartford RR Co.*, 372 U.S. 744 (1962) (App. Br. 14-15). The court below, on the other hand, ruled (R. 46) that since the rates are "admittedly compensatory" and were not found to destroy

or impair the inherent advantages of any other mode of transportation, the "finding of destructive competition is not adequately supported on the present record."

We agree with appellants that a finding that the proposed rates would have a negative effect upon the New Haven's net revenues would probably be enough to support a finding of destructive competition. In the absence of extraordinary circumstances,¹¹ a rate adjustment which diverts traffic from a competitor without benefit to the proponent, and which thus depletes the revenues of the national transportation system as a whole, is difficult to reconcile with the objectives of the National Transportation Policy.

However, the Commission's condemnation of the rates here as a "destructive competitive practice" was not based on that reasoning. Rather, it rested on the ground that the rates wholly disregarded classification principles and would undermine the New

¹¹ A rate so low as to be hurtful both to competing carriers and to the proponent itself is often regarded as the prototype of a destructive competitive practice. The New Haven's proposed all-commodity rates, however, would admittedly exceed out-of-pocket costs; it is only the change of rate (*i.e.*, the difference in revenue effect between the proposed rates and the pre-existing rates) which is said to be detrimental to the New Haven. We express no view at this time as to whether a rate change which does not benefit the proponent would invariably constitute a destructive competitive practice. We note, however, that where a rate is initially fixed at a level which touches the upper limits of reasonableness and is not essential to the profitability and efficiency of the carrier's overall operation, the Commission might be justified in concluding that a competitive reduction, even though found to be disadvantageous to the carrier, should be permitted for the benefit of shippers. See Section 15a(2), which admonishes the Commission to consider the need for "adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service * * *."

Haven's rate structure; in short, the holding as to destructive practices was merely an adjunct to the Commission's ruling that the rates violated Section 1(6). The Commission made no attempt to relate the holding to its earlier comments concerning the revenue effects of the proposed adjustment. Indeed, it drew no conclusion of any kind from those comments—not even the conclusion that the rates had resulted in a net loss of revenue during the period of their use. The Commission's report was addressed almost exclusively to questions of rate relationship and scarcely at all to questions of rate level. In these circumstances, we believe the Commission's conclusion on the "destructive competitive practice" issue cannot be sustained as an independent basis for disallowing the rates, in the absence of additional findings.

CONCLUSION

Accordingly, the judgment below should be reversed and the case remanded to the Commission for further proceedings.

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Supreme Court of the United States

October Term, 1964.

No. 22.

ALL STATES FREIGHT, INC., ET AL.,

Appellants,

v.

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY, ET AL.,

Appellees.

On Appeal From the United States District Court for the
District of Connecticut.

BRIEF FOR APPELLEE-RAILROADS.

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1964.

No. 22.

ALL STATES FREIGHT, INC., ET AL.

Appellants,

v.

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT.

BRIEF FOR APPELLEE RAILROADS.

STATUTES INVOLVED.

In addition to the statutes designated by Appellants and the Government, the provisions of § 15(1) of the Interstate Commerce Act, 49 U.S.C. § 15(1) which are pertinent in part, are as follows:

"That whenever, after full hearing, . . . the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, . . . is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed,"

STATEMENT.

The New Haven Railroad has been heavily dependent upon that kind of traffic which is usually denominated "Manufactures and Miscellaneous" for the revenues required to operate its line. Over 60% of its total freight revenue is produced by such traffic (R. 166). In the post-war period, however, its traffic of this type has suffered severe declines by reason of the shift of increasing amounts thereof to highway transportation, both private and for-hire. Thus, the Manufactures and Miscellaneous traffic originated by it and delivered to connecting railroads declined from 2,941,557 tons in 1947 to 1,479,902 tons in 1958 (R. 151).

Along with this serious and continuing loss to truck transportation, the New Haven was faced with a new competitive force when, in July 1958, competing railroads established a trailer-on-flatcar (TOFC) service—called Plan III—which itself was induced by the necessity of meeting motor carrier competition (R. 113-4, 127-8), primarily that of unregulated motor carriers, *Eastern Central Motor Carriers Association v. Baltimore & Ohio R. Co.*, 314 I.C.C. 5, 51 (1961). Under this Plan truck-trailers laden with any commodity (with specified exceptions) may be brought to the railroads' loading ramp, then carried on flatcars to destination for delivery there to the consignee at the railroads' unloading ramp. The New Haven had clearance and equipment disabilities which prevented its effective participation in this type of transportation. During the first two months in which the Plan III TOFC rates were in effect via the competing railroads, the New Haven lost to the New York Central the equivalent of 350 to 400 cars of traffic from Boston to St. Louis (R. 115, 130). Moreover, shippers from the Connecticut area began to truck to rail

loading ramps in New York for subsequent TOFC movement to the midwest, and this cost the New Haven another half million pounds of traffic per week (R. 115, 130).

The effort of the New Haven to cope with these several competitive forces had logically to take the form of a reduction in its box car rates. This was dictated both by its disabilities in the rendition of TOFC service and by the important fact that it has a great imbalance in the east-bound-westbound movement of traffic over its lines, with the result that every month it dispatches approximately 150 empty box cars to Chicago and St. Louis with a carrying capacity of 3,000,000 tons on an annual basis (R. 97, 334-6). Accordingly, the New Haven filed with the Commission the rates from specified New England points to Chicago and St. Louis, which are the subject of the order involved in this litigation. The rates were so restricted and delineated as to reflect the transportation characteristics of the traffic in question. This was observed by the court below when it stated that (R. 43-44):

"It excludes anything that cannot be carried in a box-car—this is obviously a substantial number of things; it is graduated according to minimum weight per car, denser items thus paying less per hundred pounds as has always been true; it excludes perishables, easily damaged goods, explosives, and other such goods whose cost of handling might be extreme; it applies only to freight westward; and there are other exclusions on basis of cost of shipment and handling."

In addition, stop-off and other transit privileges are not allowed (R. 58), and the rates do not apply on export-import or ex-water traffic (R. 11). This latter provision, not only confines the application of the rates to the movements which are affected by the competition which induces them, but it avoids the expensive port services which are

encountered on export-import traffic, thus again giving weight to the cost-of-service factor.

Although the New Haven's rates were initially suspended by the Commission, the suspension was lifted on July 6, 1959, and the rates then went into effect and have remained in effect to the present time.

No shipper or receiver of freight opposed the rates. No one claimed that he was being discriminated against by the relation of one rate to another, or in any other manner. Shippers did appear in support of the rates (R. 305, 315, 317, 321 and 325). They were opposed only by the New Haven's trucking competitors.

The rates not only covered out-of-pocket costs, but were found by Division 2 of the Commission to "more than cover fully-distributed costs" (R. 101), and the entire Commission made a substantially similar finding (R. 12). This means that the rates covered not only the direct cost of performing the service to which they applied but also overhead costs allocated thereto, return on investment, and a contribution for the passenger and less-than-carload deficits of the railroad (R. 376).

Upon reconsideration, the entire Commission (with three dissents) found the rates to be in violation of the provisions of § 1(6) of the Interstate Commerce Act which provides that railroads shall maintain just and reasonable classifications of property with respect to which rates are or may be made, and to constitute a destructive competitive practice in contravention of the National Transportation Policy, the latter conclusion being said by the Government to be an adjunct of the conclusion that § 1(6) is violated and not a conclusion which can be sustained as an independent basis for disallowing the rates (Government brief, p. 33).

In thus condemning the rates on the ground that they violate Section 1(6), the entire Commission for the first time construed that section as applying to rates other than

class rates, a construction which it had specifically rejected in the past. The lower court disagreed with this construction of the Act.

SUMMARY OF ARGUMENT.

Appellees submit that the court below correctly held that the Commission's interpretation of § 1(6) was erroneous.

History prior and subsequent to the enactment of § 1(6) demonstrates that the reasonable classifications required to be maintained by the railroads were those used in the application of class rates. The purpose of the provision was to prevent the circumvention of the Commission's rate powers by manipulating charges through changes in classifications. Commodity rates are adequately policed by other sections of the Act and cannot be affected by classification changes.

Commodity rates have always been treated as exceptions to the classification and the entire Commission has never held such rates to be subject to § 1(6). Indeed, the Commission has specifically refused to apply § 1(6) to all-commodity rates similar to those herein proposed and has given no reason for reversing this holding of over twenty years' standing. In those instances in which the Commission has found all-commodity rates to be unlawful, it has done so because they violated some provision of the Act other than § 1(6).

There is no support for the Commission's argument that violations of § 1(6) depend on whether or not all-commodity rates are lower than carload commodity rates which would otherwise apply. The cases clearly demonstrate that this fact, first, has no bearing on the § 1(6) issue and, second, is not necessarily a determinative factor as to the lawfulness of the rate itself. To adopt this theory would mean that an all-commodity rate below the individual carload rates would violate classification principles but such violation could be cured simply by reducing the carload rates to the level of the all-commodity rate. Yet no factors bearing on classification would be changed

thereby. This result is patently ridiculous and simply supports the position of the court below, and the admission of the Government, that the lawfulness of the effect of rates has no bearing on § 1(6) issues and should properly be considered under another section of the Act.

Appellees have also addressed themselves to certain other arguments raised herein including the Government's discussion of the relevance of "value of service" under § 1(6). Since the lower court did not rely upon this matter to support its conclusion as to the nonapplicability of § 1(6) to all-commodity rates and since the Commission made no decision with respect to this issue, Appellees submit that the question of value of service as an element in present day rate making should not be decided on this appeal.

Appellees submit that the judgment of the district court should be affirmed.

ARGUMENT.

I.

REPLY TO THE GOVERNMENT'S ARGUMENT THAT § 1(6) OF THE INTERSTATE COMMERCE ACT REQUIRES REASONABLE CLASSIFICATIONS OF FREIGHT IN THE MAKING OF COMMODITY RATES, NO LESS THAN IN THE MAKING OF CLASS RATES.

A. The Court Below Properly Held That the Commission's Interpretation of § 1(6) Was Erroneous.

1. § 1(6) applies only to classifications used for the application of class rates.

The following discussion has as its basis the distinction between "class" and "commodity" rates. "Class" rates are applied to traffic by means of two separate tariffs. One of these, the "classification", assigns every—or virtually every—article of commerce to one of a limited number of classes. The other, the class rate tariff, specifies the particular rate which is applicable to each class in the classification. The class rates are established independent of the articles upon which they will apply. Then, as a separate and independent matter, articles are assigned in the *classification* to one or another of the classes, and the class rate previously established becomes applicable to it.

The article or articles upon which commodity rates apply are known from the time the rate is established. The commodity rate is made specifically applicable to a named commodity or group of commodities. After the commodity rate is published nothing further remains to be done to fix the charge for transporting the article or articles to which it applies. With respect to the non-class rate, therefore, the function which is indispensable in applying a

class rate to a given shipment—that of assigning the article being shipped to a class in the classification—does not take place.

Class rates (basically made on mileage scales) have almost nation-wide application.¹ Even though the rates themselves may be reasonable and free of discrimination, one shipping under them may be subjected to a charge which is too high or improperly related to the rate on another commodity by reason of the classification which is assigned to his article. With respect to things shipped under class rates, therefore, there was need for a legal requirement of reasonableness in classification. Therein lies the purpose of § 1(6) and the reason for its enactment.

While § 1(6) is indispensable in connection with articles shipped under class rates, there is no need for it in connection with commodity rates, and as to such rates it would serve no purpose not fulfilled by other sections of the Act. Thus, (a) if a commodity rate is too high it violates § 1(5) of the Act, which prohibits unreasonable rates, and the Commission may reduce it under § 15(1); (b) if a commodity rate unjustly discriminates against a shipper, it violates § 2 of the Act, and the Commission may order the discrimination removed under § 15(1); (c) if a commodity rate causes undue prejudice to a shipper or locality or “to any particular description of traffic” it violates § 3(1) of the Act, and the Commission may require the removal of the undue prejudice under § 15(1); (d) if the commodity rate is unduly low it violates § 1 as supplemented by 15a(2) (subject to § 15a(3) when challenged by a competing mode of transportation) and the provision of the National Transportation Policy against unfair competitive practices. As the court below properly held, commodity rates are “sufficiently policed” under these sections (R. 44).

1. *Class Rate Investigation*, 1939, 262 I.C.C. 447 (1945), affirmed, *New York v. United States*, 331 U.S. 284 (1947).

- (a) THAT § 1(6) APPLIES ONLY TO CLASSIFICATIONS USED IN APPLYING CLASS RATES IS DEMONSTRATED BY HISTORY PRIOR TO THE ENACTMENT OF § 1(6).

At the time of the adoption of the Interstate Commerce Act virtually all traffic moved on class rates. However, not only each section of the country, but, in many cases, individual railroads, maintained different classifications and different sets of rates applicable thereto. Shippers could not tell in advance the cost of a particular movement because of these differences and the system led to the charging of excessive rates and to widespread discrimination between shippers and commodities.²

This situation was given particular attention by the Cullom Committee,³ which was primarily responsible for the drafting of the Interstate Commerce Act. After noting the urging by shippers of the need for uniformity in classifications, the Committee considered giving the proposed Commission the power to prescribe classifications.⁴ It concluded that the provisions of the proposed bill requiring publication of rates and classifications coupled with the provisions regulating unreasonable rates would secure the desired uniformity without requiring it specifically.⁵

Starting with its First Annual Report⁶ the Interstate Commerce Commission became concerned with classifications and reiterated the need for uniformity. In 1891 it

2. See *Investigation and Suspension Docket* 76, 25 I.C.C. 442, 454-5 (1912).

3. Senate Select Committee on Interstate Commerce, appointed March 21, 1885.

4. S. Rep. No. 46, 49th Cong., 1st Sess. 188 (1886).

5. *Ibid.* The Interstate Commerce Act, as originally passed, did in fact contain a requirement that rates and classifications be made public, 24 Stat. 380 (1887), 49 U.S.C. § 6 (1958).

6. First ICC Ann. Rep. 30-32 (1887). In fact, in 1888 the House of Representatives adopted a resolution directing the Commission to prescribe a uniform classification for the railroads, but it died as a result of Senate inaction. See *Investigation And Suspension Docket* 76, 25 I.C.C. 442, 455 (1912).

recommended that Congress require the adoption by the railroads of a uniform classification.⁷ By 1894 the Commission recommended that it be empowered to make a uniform classification, subject to amendment from time to time, and that penalties be provided for non-conformance.⁸

At the same time that it was urging uniformity of classifications, the Interstate Commerce Commission was exercising power over classifications in proceedings involving §§ 1, 2 and 3 of the Act, and in many cases declared classifications of particular articles to be unreasonable.⁹ In determining the reasonableness of classifications the Commission generally considered factors relating to bulk or weight, ease of handling, susceptibility to loss and damage, territorial interests, cost of service, etc., with value of service, in the sense of a more valuable article being able to bear a larger proportion of the transportation burden, being the element of primary importance.¹⁰ However, enforcement of Commission decisions was a major problem since it had no specific power to prescribe either reasonable classifications or reasonable rates for the future. As to rates, the problem was solved by the Hepburn Act¹¹ in 1906 under which the power to prescribe maximum reasonable rates was expressly conferred on the Commission. This in itself proved to be inadequate because changes in transportation charges could be effected by changes in classifications as well as changes in rates.

7. Fifth ICC Ann. Rep. 33 (1891).

8. Eighth ICC Ann. Rep. 38-39 (1894).

9. See, e.g., *National Hay Association v. L.S. & M.S.R. Co.*, 9 I.C.C. 264 (1902); *Thurber v. N.Y.C. & H.R.R. Co.*, 3 I.C.C. 473 (1890); *James Pyle & Sons v. East Tennessee, Virginia & Georgia R.R. Co.*, 1 I.C.C. 465 (1888).

10. E.g., *Meyer v. Cleveland, C., C. & St. L. Ry. Co.*, 9 I.C.C. 78 (1901); *Thurber v. N.Y.C. & H.R.R. Co.*, *supra* note 9; *Myers v. Pennsylvania Co.*, 3 I.C.C. 130 (1889). In addition see Second ICC Ann. Rep. 35 (1888); First ICC Ann. Rep. 31, 36 (1887).

11. 34 Stat. 589 (1906), 49 U.S.C. § 15(1) (1958).

This loophole was corrected by the passage of the Mann-Elkins Act in 1910.¹² This amended the Act to provide in § 1(6) that carriers must establish and maintain reasonable classifications of freight with reference to which rates are or may be made and in §§ 15(1) and (7) the Commission was given the power to find classifications unreasonable and prescribe reasonable classifications in place thereof. That these provisions were enacted to insure the reasonableness of classifications used in connection with class rates is clear from the legislative history. Thus in a report on the Senate Bill (S. 6737) it was stated that:

"Some doubt has been raised as to whether, under the provisions of Section 15 of the existing act, the commission is empowered to review CLASSIFICATION of freight as well as rates, and to make orders dealing with improper classifications. (Judson on Interstate Commerce Ed. of 1908, Sections 209, 210.) By Section 9 of the bill, this doubt is removed and the power is expressly vested in the commission."¹³

And in a special message to Congress President Taft recommended:

"... that the Commission shall be fully empowered, beyond any question, to pass upon the classifications of commodities for purposes of fixing rates, in like manner as it may now do with respect to the maximum rate applicable to any transportation."¹⁴

Similarly, in the debates on the proposed Bill in the House, Mr. Russell, a member of the Committee on Interstate and Foreign Commerce said:

12. 36 Stat. 544, 551, 552 (1910), 49 U.S.C. §§ 1(6), 15(1), 15(7) (1958).

13. S. Rep. No. 355, 61st Cong., 2d Sess. 4 (1910).

14. H. Rep. No. 923, 61st Cong., 2d Sess. 9 (1910).

" . . . I am not familiar with railway practices or rate sheets, or things of that kind, but I was told by a member of this House who has familiarity with them, a few days ago, that the shipper can be extorted from; he can be made to pay an unjust rate just as well through classification as he can through the fixing of a rate. The carriers can put an article in one classification, subject to a given rate, and if the I.C.C. sees fit to declare that rate unreasonable, and reduce it, declaring what shall be a reasonable rate to take its place, the carrying corporation can obtain the same benefit and put the shipper under the same disadvantage by simply changing the classification of the articles." ¹⁵

And Mr. Mann, Chairman of that Committee, stated, *inter alia*, that "classification of freight is just as important as rates, because by moving a particular article from one class to another you affect the rates." ¹⁶ Again, after referring to the Official, Western and Southern Classifications, and ones of lesser importance, Mr. Mann concluded:

" . . . However, in the course of time undoubtedly the power of the commission to have control of classifications will lead to greater uniformity and possibly to complete uniformity of classifications . . . " ¹⁷

Clearly what Congress had in mind was the established class rate classifications in the several regions, the ability of the carriers to use these to charge discriminatory and excessive rates and the thought that, as urged by the Commission, uniformity in these classification tariffs could be encouraged.

The government has contended (Brief pp. 13-14) that the Commission had applied classification principles to

15. 45 Cong. Rec. 5142 (1910).

16. 45 Cong. Rec. 4578 (1910).

17. *Ibid.*

commodity rates prior to 1910 and, therefore, the enactment of the Mann-Elkins Act simply approved this practice and intended that § 1(6) apply to commodity as well as class rates.

Upon analysis, this argument is not supported by the authorities cited. For the most part, commodity rate cases were brought under § 2 or § 3 of the Act prohibiting discriminations resulting from different charges for transporting a *like kind* of traffic under similar circumstances or preferring a particular description of traffic or person to the prejudice of another. In *Coxe Brothers & Co. v. Lehigh Valley R. R. Co.*¹⁸ the Commission was asked to find that anthracite and bituminous coal were like kinds of traffic; in *Bates v. The Pennsylvania Railroad Co., et al.*¹⁹ the removal of corn from the classification and the application of a commodity rate thereto was found to be a discrimination against a like kind of traffic. Similarly, discrimination was found in *Stowe-Fuller Company v. Pennsylvania Co.*,²⁰ where the Commission refused to allow three types of brick to take different rates. It is true that in these cases the Commission, in determining whether there was in fact a *like kind of traffic*, referred to classification or grouping in comparing the commodities. However, whether articles constitute a *like kind* of traffic depends necessarily on many of the same considerations that go into the making of a classification and it appears that the Commission was here using "classification" simply to denote its comparing of articles for the purposes noted above. In fact, the Commission in *N.Y. Bd. of Trade v. P.R.R. Co.*, 4 I.C.C. 447 (1891), pointed out that the considerations applicable to questions of like kind of traffic are indeed similar to those involved in questions of classification (p. 514). It is clear, therefore, that the Government's contention that the Mann-Elkins Act approved the Commission's prior application of

18. 4 I.C.C. 535 (1891).

19. 3 I.C.C. 435 (1890).

20. 12 I.C.C. 215 (1907).

classification principles to commodity rates and intended that § 1(6) should apply to commodity as well as class rates cannot be sustained. On the contrary, noting that commodity rates (and class rates, but not classifications applicable thereto) could be controlled under §§ 1, 2 and 3 of the Act, the more likely inference is that Congress gave its attention to the matter of controlling class rates by controlling the classifications to which they applied. That was the problem. Moreover, that is what the Congressional history shows to have been done.

(b) DEVELOPMENTS SUBSEQUENT TO THE ENACTMENT OF § 1(6) CONFIRM THE VIEW THAT § 1(6) DOES NOT APPLY TO COMMODITY RATES.

This conclusion is borne out by *Rates on Lumber & Lumber Products*, 52 ICC 598 (1919), the very case which the Government cites for the opposite proposition. Notwithstanding the language quoted in the Government's Brief (pp. 14-16), the Commission made it clear at the beginning that the case involved *rate relationships* and the determination of reasonable and nondiscriminatory *rate relationships*. And in answer to an argument about its classification power the Commission pointed out that prior to the 1910 amendment of §§ 1 and 15 it had the power to determine rate relationships of different articles and to effect reasonable rates to avoid undue prejudices against a particular description of traffic.²¹ This was the object sought therein. It went on to say that whether the means through which this is attained is referred to as a lumber list, a classification, a rate schedule or a combination of all these means little since §§ 1, 3 and 15 empowered it to effect a rate relationship. Thus the Commission made clear that this was not a classification case, and was not undertaken under § 1(6), but under the powers it had prior

21. 52 I.C.C. at 602, 603.

to the enactment of that provision and that it was concerned with rate relationships.

In *U.S. Leather Co. v. Southern Ry. Co.*²² the Commission pointed out that the theory that the fixed relationships between commodities must be the same in all cases and that the classification determines those relationships would mean that commodity rates could never be justified. In *Advances in Rates—Eastern Case*,²³ the Commission referred to commodity tariffs as exceptions to the classified list and in *R.R. Commn. of Nevada v. Southern Pacific Co.*²⁴ the Commission explained that it could fix a low scale of class rates with no commodity rates in order to move certain traffic or it could fix a high level of class rates and take from the classification a number of articles taking commodity rates, pointing out that the latter was known to be the manner used by the carriers through the years to adapt their rates to the movement of traffic.²⁵

Indeed, in its first extensive exercise of its new power to suspend classifications,²⁶ the Commission stated that "at the present time the three great classifications, Official, Western and Southern, subject to exceptions' sheets and commodity rates, . . . are the only classifications applying to interstate traffic." This makes it clear that classifications have been looked upon by the Commission as those applicable to class rates.

Finally, in reference to the *Class Rate Investigation*, *supra*, the Commission pointed out that it was examining the class rates and in *Consolidated Freight Classification*, a related proceeding,²⁷ the underlying classifications. It

22. 21 I.C.C. 323 (1911).

23. 20 I.C.C. 243 (1911).

24. 21 I.C.C. 300 (1911).

25. *Id.* at 232.

26. *Investigation and Suspension Docket No. 76*, 25 I.C.C. 442 (1912), (known as the "Western Classification Case").

27. Both of these proceedings are reported together in 262 I.C.C. 447 (1945), *aff'd New York v. United States*, 331 U.S. 284 (1947). They point up the fact that rates and classifications are entirely sepa-

pointed to widespread departures by way of commodity rates in derogation of the principles of classification (p. 476). It did not conclude that the reasonable classification provision of § 1(6) applied also to these. The extensive use of such rates simply supported the conclusion that existing classifications were outmoded and obsolete and required modification. The conclusion of that case and the requirement that a uniform classification be established was called the culmination of the many efforts to get uniformity.²⁸ A uniform classification is the classification that the Commission has always sought and it is indeed the classification of freight that satisfies the requirement of

rate matters which rest on separate principles. This was recognized in the *Western Classification Case*, note 26, *supra*, in which the Commission said at p. 453:

"Classification is an art or a science in itself. Having completed a new classification along these or similar lines, each carrier can readjust its rates on the basis of that classification in such a manner as to preserve its existing revenues. This assumes what, in our judgment, is the correct method of procedure, that the uniform classification must be worked out without an attempt to affect revenues. Classification and rates and revenues should be kept entirely separate. There will doubtless be many coincidences in which the present rate applied to the new classification will bring about the exact transportation charge which results from the old rate applied to the old classification. In other cases the rate must be advanced or reduced, depending upon the change in the classification of the article in order to protect existing revenues. This is entirely without reference to the sufficiency or insufficiency of present revenues, which is a distinct and very different question. It would only complicate and confuse matters to attempt, through the instrumentality of the classification, to bring about a revision in rates and charges. Whether a rate is too high or too low should be made a separate issue distinct from classification. Nevertheless, as far as possible, the establishment of ratings and the publication of rates should follow changes in the classification very closely. A classification is a universal tariff from which the schedules of individual carriers should not depart, except in cases demanded by special conditions. Commodity tariffs in restricted numbers will probably always remain a necessity." [Emphasis supplied.]

28. Sixty-Sixth I.C.C. Ann. Rep. 58 (1952).

§ 1(6) for just and reasonable classifications of property with reference to which rates are or may be made.²⁹

Thus it seems clear that classifications, as envisaged not only since the enactment of § 1(6) but, indeed, since the passage of the Act, are those used in connection with the application of class rates and that Congress was aware of this in passing the amendment of 1910.

2. The Commission has consistently refused to apply Section 1(6) to commodity rates.

The entire Commission has never held that commodity rates violate § 1(6) of the Act. A careful reading of the cases cited by the Government (Brief p. 16) shows that the issues therein arose and were decided under §§ 1(5), 2 and 3 of the Act, relating to reasonable rates, discrimination and undue prejudice and that references to classification related to the comparisons of commodities for the purpose of determining their likeness and the relationship of rates in the application of the latter provisions.³⁰ In all the decisions of the Commission since 1910, one will search in vain for a decision of the full Commission applying § 1(6) to commodity rates, although there are many determining their lawfulness under §§ 1(5), 2, 3 and 15, including the relationship of commodity rates in *Rates on Lumber and Lumber Products, supra*. The reason, of course, is clear. These sections amply protect the shipper, locality, other descriptions of

29. Apparently the Commission agrees because, as the Government noted on p. 4 of its Brief, the hearing examiner found that the proposed rates tended to undermine the "uniform freight classification in violation of section 1(6)" of the Act (R. 84).

30. *Transit of Furfural Residue at Various Points*, 322 I.C.C. 794 (1964), decided by Division 2 after the decision of the district court in the instant proceeding, held that a proposal to establish increased commodity rates on furfural, further processed than screened, while retaining existing rates on furfural, not further processed than screened, violated §§ 3(1) and 1(6). It appears that this decision is simply erroneous and is not supported by the authorities cited therein.

traffic or other rates from preference, prejudice and unreasonableness as to commodity rates. Since a commodity rate is applicable to a single commodity or group of commodities under a rate tariff and does not depend on a classification to determine its application, the provision of § 1(6) has been deemed to have no application to such a rate. Subjecting commodity rates to the requirements of § 1(6) would simply add an additional and needless burden to the process of justifying a rate. Moreover, it is difficult to see how a commodity rate not in violation of the Act as discriminatory, preferential, unreasonably high or low or unreasonably related to other rates could violate § 1(6) alone because, by its nature, it is an exception to the classification which was constructed on classification principles.

It is interesting that the Commission (R. 13) and the Government in this proceeding (Brief p. 16) state that all-commodity rates were introduced in the early 1930's; indeed the Commission pointed out in 1940 that such rates had for many years been used on export and import traffic.³¹ Yet there is no case in the early 1930's or before questioning the propriety of such rates under § 1(6) of the Act. Rather, in those cases in which certain proposed all-commodity rates were eventually condemned, the unlawfulness resulted from the violation of some section of the Act other than § 1(6).

It was not until Commissioner Alldredge in several opinions raised the issue of § 1(6) that it was squarely presented to the Commission and soundly rejected in *All Freight to Pacific Coast*, 248 I.C.C. 73 (1941), aff'd, *Pacific Inland Tariff Bureau v. United States*, 50 F. Supp. 376 (W.D. Wash. 1943).³² The all-commodity rates there involved were applicable on straight as well as mixed

31. *All Freight to Pacific Coast*, 238 I.C.C. 327, 328 (1940).

32. The Commission's decision was upheld over a specific challenge that it had misconstrued its powers under § 1(6), 50 F. Supp. at 377.

carloads as are the rates under consideration in this proceeding. It was urged that the rates violated § 1(6) and the basis of that position is probably best summed up in the dissenting opinion of Commissioner Alldredge who was the chief exponent of the philosophy expounded. Thus, he argued that (p. 101):

“ . . . The significance of classification should be considered in its broadest sense, that is, as furnishing a comprehensive system for the distribution of the general rate burden and the establishment of rate relations, and, so regarded, it necessarily embraces commodity rates as well as so-called class rates . . . ”

The majority of the Commission answered by stating that (p. 86):

“ . . . Respondents now maintain a full line of class rates governed by the western classification from and to all of the points involved in this proceeding, as required by section 1(6) of the Interstate Commerce Act. They also maintain hundreds of lower rates as exceptions to the classification, including commodity rates, that are not subject to the classification ratings nor to rules as to mixing of commodities in carloads. Some of the rates apply on broad mixtures of articles differently rated. For example, the brass, bronze, and copper list includes 115 different articles; drugs, medicines, and chemicals, 177; and machines and machinery, over 1,200. There are other lists, but these are representative.”

and continued (pp. 87-88) by stating that:

“Class rates normally reflect the maximum of reasonableness on goods falling within the various classes of traffic. Commodity rates are established, and necessary or desirable exceptions to the classification are made, when circumstances and conditions suggest that

the class basis is too high for application on the traffic. *We have approved this basis of rate making, and have never required commodity rates to conform to the ratings of the classification.* We have long recognized that most of the freight for the Pacific coast moves on commodity rates.

“The public is primarily interested in the charge for the service, irrespective of whether a rate is stated as a class or commodity rate. All rates are required to be just and reasonable, nondiscriminatory and non-prejudicial. *To require carriers to maintain rates only on a classification basis would make section 1(6) paramount to all other sections of the act, particularly section 1(5), which requires all rates to be just and reasonable, and in this case the result would be rates that are unreasonable under the circumstances and conditions surrounding the traffic.*” [Italics supplied.]

In Commissioner Eastman's concurring opinion, he stated, at p. 88:

“As is well known, the classifications of freight which the railroads publish are for the purpose of governing the application of their class rates. The latter are used when no rate has been published applying specifically to the movement in question, such specific rates being called commodity rates. The railroads carry, of course, a vast multitude of separate and distinct commodities, and the class rates are a convenient device for avoiding the publication of a like multitude of separate and distinct rates. . . .”

He then went on to state that classification principles have taken into account not only cost of service, but also differences in commodity values and that this consideration of commodity values led to rates on many commodities considerably higher than cost of service would have

justified. He concluded that this fact "nourished the competition which the railroads have encountered as motor transportation has developed. . . ." (p. 89).

In his dissent in the present case, Commissioner Webb stated, with regard to this (R. 21-22):

"What Commissioner Eastman regards as elementary when the winds of competition were rising is even more elementary today when those winds have reached hurricane force. The legislative and historical background of section 1(6) leaves no doubt that the requirement of classification was intended to reinforce the Commission's power to establish maximum reasonable rates but not to prohibit or restrain competitively compelled departures from the classification."

Commissioner Webb also stated at R. 21:

"The majority's conclusion that all rates are governed by the classification requirement of section 1(6) is contrary to the fundamental principles of ratemaking which this Commission has recognized during the last twenty years."

The entire Commission again held that all-commodity rates did not violate § 1(6) in *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623 (1942). In fact, when the development of these Commission decisions on the § 1(6) issue is seen in proper perspective, it is apparent that the opposing view, which was resurrected by the Commission in the instant proceeding, might well be called the "Alldredge Doctrine" since it simply expresses the philosophy, articulated over a period of years, of one Commissioner.

It was Commissioner Alldredge, dissenting in *All Freight Between Harlem River, N.Y. and Boston*, 234 I.C.C. 673, 676 (1939), who argued that the reduction in all-commodity rates, approved by the other two members

of Division 3, violated § 1(6) and that the rates must not only provide revenue but must function fairly and effectively in the general rate structure. Another § 1(6) dissent by this Commissioner appears in *All Freight From Chicago and St. Louis to Santa Rosa, N. Mex.*, 243 I.C.C. 517, 520 (1941), a case in which the other members of Division 2 approved a proposed all-commodity rate.

In *All Freight Between Los Angeles and Albuquerque*, 28 M.C.C. 161, 167 (1941) the classification argument was urged in the protest filed against a proposed all freight commodity rate. The rate was approved by Division 3 with Commissioner Alldredge dissenting on the classification point and relying on *Rates on Lumber and Lumber Products*, 52 I.C.C. 598 (1919) as does the Government in the proceeding here under review (Government Brief, pp. 15-16).

Commissioner Johnson was the only Commissioner ever to join the Alldredge cause. In two decisions by Commissioners Alldredge and Johnson, constituting a majority of Division 3, all-commodity rates were held unlawful, as violations of § 1(6) and § 216(b), respectively, with 52 I.C.C. 598 (1919) used as authority. In the first of these, *All Freight From Eastern Ports to the South*, 245 I.C.C. 207 (1941) Commissioner Mahaffie concurred in the result, seeing a possible violation only under § 15a. In the second, *All Freight From Chicago and St. Louis to El Paso, Tex.*, 28 M.C.C. 727 (1941), Commissioner Aitchison concurred only in the result.

The four cases referred to immediately above were decided between February and May of 1941. Thus when the entire Commission considered the *All Freight to Pacific Coast* case in October of that year, it was well aware of the Alldredge doctrine and the grounds upon which it rested. That doctrine was rejected by the Commission with Commissioners Alldredge and Johnson dissenting on the classification issue, 248 I.C.C. 73, 99, 106 (1941).

The following year *All Freight From Eastern Ports to the South, supra*, was reconsidered by the entire Commission, 251 I.C.C. 361 (1942) and the unlawfulness of the rates was upheld, but the § 1(6) issue was specifically not passed upon. Commissioners Alldredge and Johnson did not dissent.

In *All Freight From Butte, Mont. to Spokane, Wash.*, 251 I.C.C. 291 (1942), Division 2 held that proposed all freight rates did not violate the classification principle. Commissioner Alldredge dissented without opinion, presumably on this issue. In the other major decision of the entire Commission on this question, *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623 (1942), holding that proposed all-commodity rates did not violate § 1(6), Commissioners Alldredge and Johnson filed separate dissents. Later, Division 2 held rates on buckwheat unreasonable to the extent that they exceeded rates on other grain products. Commissioner Alldredge, in a concurring opinion, stated that the real issue was the grouping of commodities which should not be disrupted except for clear and compelling reasons, citing § 1(6). *Bunge Corp. v. Ann Arbor R. Co.*, 283 I.C.C. 617, 626 (1951). This apparently marked the end of Commissioner Alldredge's campaign. Toward the end of his tenure on the Commission, he served with Commissioners Arpaia and Freas on Division 2. In *Eastern Central Motor Carriers Association, Inc. v. Akron, Canton & Youngstown R. Co.*, 293 I.C.C. 295 (1954) that Division, faced with a § 1(6) argument against the lawfulness of proposed all-commodity rates, stated that after the lapse of time since the *Pacific Coast* and *Southern Territory* cases, it would not be appropriate in a case of limited scope to reverse the holding of the entire Commission with respect to the classification issue. Thus, Commissioner Alldredge not only did not dissent, but apparently acquiesced in this upholding of the Commission's decisions of long standing.

The Commission in the instant case has reversed this long-standing position and espoused the "Alldredge doctrine" which had long before been abandoned by its author. That this position cannot be justified would seem to be clear since it has been demonstrated that, on the basis of the purpose of § 1(6), the need for its provisions and the interpretation given to it by the Commission over the years, the provision thereof, requiring "reasonable classifications" has no application to commodity rates.

It is also clear from the Commission's decision in this case that had reduced rates on each of the commodities included in the New Haven's tariff been published in individual tariffs on the same level as that involved here, the Commission would have found no difficulty in approving them. Indeed, this fact was admitted in the brief filed on behalf of the Commission and the Government in the Court below.³³ The obvious effect of this admission is that if the New Haven had assessed the same number of dollars and cents for the transportation involved, and did so by printing a separate rate for each article, then the rates would have been properly related to each other—there would have been no classification problem—and they would

33. Thus, at page 39 of the Government-I.C.C. brief, it was stated:

"Had they published their rates as carload rates on specific commodities (which is what they are here suggesting), they would have continued to maintain effective straight carload rates, rather than the mere paper rates which now result, and the conflict between the all-commodity rates at issue and the individual carload commodity rates, which now exists, would have been averted. However, it is precisely because the New Haven chose not to publish its rate reductions in individual tariff items but sought unilaterally to sweep away every established carload rate in one publication of unprecedented all-commodity rates that the Commission ordered their cancellation."

*Again, (page 40 of the Government-I.C.C. brief below):

"... the Commission virtually invited them to refile their rates in individual tariff items, although the carload class and individual commodity rates, as thus reduced, assuredly would disrupt the existing pattern of rates."

not represent a destructive competitive practice even though they "assuredly would disrupt the existing pattern of rates".

In the light of the foregoing, it is especially difficult to find any substance to the Commission's application of § 1(6) to the rates here involved. That the publication of the same rates as individual commodity rates would have been acceptable does show, however, that the requirement of reasonable classification has no application to commodity rates and that its application should be confined to the situation which gave rise to it, namely, to insure proper classification for use in applying class rates.

3. Neither the Commission's Report nor the Government's Brief properly distinguishes the cases in which the Commission has approved all-commodity rates without finding that they violated § 1(6) of the Act.

The Commission's report attempts to distinguish the *Pacific Coast* case by saying that the rates therein considered were no lower than the carload commodity rates which would have otherwise applied (R. 14). It is true that the Commission said (248 I.C.C. at p. 87) that the all-commodity rates on the freight that would move under them were no lower than those on straight carloads, but this observation was not in any way related to the Commission's conclusion that § 1(6) had no application to the all-commodity rates. It was made, rather, to distinguish two other cases in which conclusions of undue prejudice had been found with respect to the rates considered. Indeed, the requirement for reasonable classification under § 1(6) was not so much as mentioned in those cases.

The two cases cited by the Commission at R. 14 simply required the rates to be restricted to mixtures under the particular circumstances involved in each.

The Government, in its brief (p. 17), also states that in certain cases the Commission has restricted the application of all-commodity rates to mixed shipments. Actually, most of the cases there cited simply found the proposed rates to be unreasonably low and one³⁴ held the rates to be reasonable because they covered costs and were competitively necessary. The point is, however, that each case was decided on its facts and the lawfulness of the level of the proposed rates was considered. None of these decisions referred to § 1(6) or its counterpart § 216(b).

On page 18 of its brief, the Government refers to cases in which the Commission condemned all-commodity rates which undercut class and carload commodity rates. In one of the cases cited, *All Freight Rates to Points in Southern Territory*, 253 I.C.C. 623 (1942), the Commission was so unconcerned about the matter of all-commodity rates being lower than individual carload commodity rates that it said (p. 633) that such individual carload rates "should be reduced so as not [to] exceed the all-commodity rates, if it is intended to apply the latter as maxima." Thus, the matter which is now said to be so vital was left completely to the discretion of the railroads involved. Moreover, if a carrier should reduce its individual carload rates so that they do not exceed an all-commodity rate it would, under this reasoning, automatically achieve a proper relationship between all of the articles involved—a reasonable classification. The superficiality of the distinction urged by the Government is apparent.

The foregoing cases and statements and similar ones propounded by Appellants at pp. 21 and 23 of their brief, simply support the proposition that in various cases, each decided on its own particular circumstances, the Commission has found all-commodity rates to be either unreasonable or reasonable. The fact remains that these interesting observations about rates are not pertinent to the ap-

34. *Freight, All Kinds, From Toledo, Ohio, To Chicago, Ill.*, 302 I.C.C. 751 (1958).

plication of § 1(6) to commodity or all-commodity rates. They do not lend support to the Commission's holding that the rates in question violated § 1(6). And while the Commission was approving or disapproving all-commodity rates for the reasons mentioned above it kept right on stating that § 1(6) was not violated.³⁵

In connection with the Government's contention that an all-commodity rate which is lower than the carload rates on some of the individual commodities subject thereto ignores classification principles and, indeed, in relation to its argument in general, that commodity rates must conform to the reasonable classification requirement of § 1(6) it should be noted that individual commodity rates themselves ignore classification standards. "We . . . have never required commodity rates to conform to the ratings provided in the classification" (*All Freight From Butte, Mont., to Spokane, Wash.*, 251 I.C.C. at 296). When they are published, being lower than the classification basis of rates, the traffic actually moves on them. As to such traffic, the classification basis, therefore, becomes in the Government's words, a basis of "paper rates". About 1% of all rail carload tonnage moves on class rates in the Eastern United States.³⁶ It is patently absurd, therefore, to say that an all-commodity rate makes a class rate a paper rate which would not satisfy the requirement that the carrier maintain a just and reasonable classification of freight. The classification, in combination with the class rates, still performs the function of setting a maximum reasonable basis of rates. And, as to that traffic which moves on the class rates, it is still of just as vital importance that the property be given a reasonable classification as it is that the class rate which is applied thereto shall be

35. *E.g.*, *Eastern Central Motor Carriers Association, Inc. v. Akron, C. & Y. R. Co.*, 293 I.C.C. 295 (1954); *All Freight Rates To Points In Southern Territory*, 253 I.C.C. 623 (1942); *All Freight From Butte, Mont., To Spokane, Wash.*, 251 I.C.C. 291 (1942).

36. *Eastern Central Motor Carriers Assn. v. The Baltimore & O.R.R.*, 314 I.C.C. *supra*, at 17.

reasonable. Here, as previously urged, is the true and necessary reason for an application of the reasonable classification requirement of § 1(6).

The Government's apparent contention that classification is reasonable or unreasonable, depending upon whether or not individual carload rates are lower or higher than all-commodity rates can have no rational basis. If, for example, there is an all-commodity rate of 80¢ per 100 pounds applying on specified articles in straight or mixed carloads, and if each of the articles may move by a competitive agency at a rate of 80¢ but the railroad has an individual carload rate of \$1.00 on one of the articles then, under the Government's argument, there is an unreasonable classification in the all-commodity rate. If the individual carload rate should be reduced from \$1.00 to 80¢, there would no longer be an unreasonable relationship between the various commodities and no offense to classification principles. Yet none of the facts with respect to the characteristics of the several articles have changed. If traffic is freely moving by railroad on the individual rate of \$1.00, the fact that that rate is higher than the all-commodity rate might possibly indicate that the latter is too low as applied to the individual commodity involved. If it were to be investigated by the Commission, traditional grounds of condemnation are available—just as in the case involving a reduction in a rate which applied to that article only. But to condemn the reduced all-commodity rate on the ground of unreasonable classification because lower than an individual rate is simply to say that the all-commodity rate represents a rate reduction and is, therefore, unlawful. The Commission's reasoning and the Government's position in this case would permit a high-cost carrier to say to a low-cost carrier which considers that competitive conditions require all-commodity rates on straight or mixed carloads, "On some of these articles your rates are lower than the individual carload rates and, therefore, are in violation of

§ 1(6)" and upon that theory have the rates found unlawful. There would be no need to show that they are not compensatory, and there would be no need to show that the Complainant is the low-cost carrier. Such a result should no more be permitted when an all-commodity rate is involved than when an individual commodity rate is involved. To sanction the construction of § 1(6) which is urged by the Government in this case would be to seriously jeopardize the 1958 amendments, which are now § 15a(3) of the Interstate Commerce Act, and this Court's decision in *I.C.C. v. New York, New Haven & Hartford R. Co.*, 372 U.S. 744 (1963).

Referring again to the Commission's report, perhaps the most startling conclusion is that exceptions rates and commodity rates are not departures from classifications, rather they are a "necessary and established part" of the rate structure and, therefore, a "reasonable separate category of classification".³⁷ In view of the long and unwavering line of cases referring to commodity and exceptions rates as exceptions from classification,³⁸ this statement comes without benefit of authority. Moreover, the very name "exceptions rates" should tell us something. Having thus arbitrarily placed commodity rates within the realm of classification, the Commission promptly makes it clear that just and reasonable classifications of commodity rates bear little if any resemblance to orthodox classifications; because they are based on entirely different considerations.³⁹ This "clarification" comes just after the Commission has said, first, that all-commodity rates are closely akin to commodity rates and, next, that they here violate § 1(6) be-

37. R. 15.

38. *E.g.*, *Eastern Central Motor Carriers Association v. Baltimore & Ohio R. Co.*, 314 I.C.C. 5 (1961); *Class Rate Investigation*, 1939, 262 I.C.C. 447 (1945); *All Freight to Pacific Coast*, 248 I.C.C. 73 (1941); *Railroad Commission of Nevada v. Southern Pacific Co.*, 21 I.C.C. 329 (1911); *Advances In Rates—Eastern Case*, 20 I.C.C. 243 (1911).

39. R. 15.

cause they are made without relation to classification principles.⁴⁰ This argument, in summary, appears to be that commodity rates and all-commodity rates are closely akin. Commodity rates *are* classifications *although* they don't resemble the principles of classification. All-commodity rates *are not* classifications *because* they don't resemble the principles of classification.

The District Court has put these considerations in their proper perspective by pointing out that commodity rates and exceptions ratings were developed as departures from the classifications when justified by competition or other particular situations. Indeed, the inability of the principles of classification and of class rates to meet these situations, such as carrier competition, market competition and the transportation characteristics of traffic necessitated these departures in the first place.⁴¹

The court then noted that all-commodity rates were a natural outgrowth of the rate structure, developed to meet competition and to permit the movement of mixed shipments of freight in carloads. It concluded that, as departures from the classification, the rates in question are no different in principle from similar rates long permitted by the Commission and could find no reason for interpreting § 1(6) so as to prohibit them. Further, it said they violate neither the language nor intent of that section.

The Government, in effect, admits at pages 18 and 28 of its brief that all-commodity rates such as those here in question are not necessarily unlawful. Although it loyally adopts the language of the report that commodity rates are a reasonable category of classification, it is clear that it conceives that all-commodity rates can be lawful when tailored to their legitimate purpose, even if that purpose should be simply competition from a similar rate.

40. *Ibid.*

41. See cases cited in note 38, *supra*. See also, Locklin, *Economics of Transportation* 163 (5th ed. 1960).

Thus, the Commission has nowhere cited any authority nor given any reason for its departure from the *Pacific Coast* case and its interpretation, of twenty years' standing, that all-commodity rates do not violate § 1(6) of the Act. If the Commission, in fact, meant to reverse its prior interpretation of § 1(6) it must fully set forth its reasons for so doing.⁴²

The alleged destructive effect of the proposed rates on rate structures is the only apparent reason for the holding that § 1(6) has been violated. If this is to be the attack on the rates it should be made in accordance with the standards of § 15a(3) rather than upon the basis of the principles governing the reasonableness of classifications. Those principles are irrelevant as to non-class rates. Moreover, they could be the instrument by which the purposes of § 15a(3) could be thwarted. Thus, a competing carrier could say that under classification principles the most important element has been value of the article (and, therefore, value of the service); that these articles are of high value and should, therefore, take high rates. If the Commission adopted such an argument it would not appear to be requiring the publishing carrier to protect the traffic or rate structure of the protesting carrier in violation of § 15a(3). It would appear simply to be applying long-established classification principles. So the argument would run. And soon the situation would be back where it was before the enactment of § 15a(3). The Commission would again be the giant handicapper, parcelling out "fair shares" of the traffic and inhibiting the free flow of competitive forces in the name of applying to commodity rates, that which it never applied before, the reasonable classification provision of § 1(6). It has been the recent purpose of Congress to grant greater freedom to regulated carriers in meeting competition.⁴³ The rulings with respect to intermodal

42. *Secretary of Agriculture v. United States*, 347 U.S. 645 (1954).

43. 72 Stat. 572, 49 U.S.C. § 15a(3) (1958), *I.C.C. v. New York, New Haven & Hartford R. Co.*, 372 U.S. 744 (1963).

competition were greatly clarified by this Court's opinion in *I.C.C. v. N.Y., N.H. & H.R. Co.*, *supra*. It would be extremely unfortunate if the Congressional purpose were now to be nullified by permitting the Commission to impose requirements as to competitive rates which have not been imposed heretofore and which were specifically held not to apply to commodity rates.

B. Reply to the Government's Argument That in Applying § 1(6) the Commission May Appropriately Take Into Account Value of Service Considerations.

With respect to the discussion under this heading, which appears on p. 19 of the Government's brief, it should first be observed that it is, of course, Appellees' position that § 1(6) has no relevancy to commodity rates, such as are here involved. With respect to the applicability of the value of service doctrine in judging the lawfulness of rates under the provisions of the Act which have unquestionable application thereto, Appellees submit the following comments:

First, it should be noted that the lower Court's reference to the value of service matter was not relied upon in concluding that § 1(6) has no application to the rates involved but applies only to classifications used in connection with class rates. The Court simply stated that it would appear that the Commission invoked § 1(6) as a means of preserving a basis for the value of service concept and then followed the comments on value of service to which the Government takes exception.

The value of service concept to which the Court here addressed itself was, as the Court said, that "referred to above . . ." (R. 45), where the Court had listed classification factors, including value of the service, under which ". . . commodities of higher value, whose transportation characteristics were otherwise no different from those of lower value have historically been charged higher rates"

(R. 41). What the Court meant by value of service, therefore, was quite clear. While it is in this sense that the Government uses value of service when it says, for example (on pp. 20 and 21 of its brief), that "Traditionally the value of a transportation service was thought to be a direct function of the value of the commodity to be shipped . . .", it ends up by discussing value in terms of how much a given transportation agency can charge *vis-a-vis* other transportation agencies with which it competes. As to value of service in the sense of effect on the movement of traffic over a given transportation agency, this, of course, is a factor for consideration. But once a carrier has established that there is a reasonable relation between the rate which it has fixed and the competitive factors with which it is attempting to deal, this inquiry should be at an end; the Commission should not be permitted to assume its role as a "giant handicapper" and to undo the Congressional purpose which resulted in the enactment of § 15a(3).

It is respectfully submitted, however, that questions such as these should not be decided in this appeal. The applicability of the value of service principle was not an issue decided by the Commission. The Court ought not to be required to declare principles on this subject in the abstract. It is respectfully submitted that it should hold that § 1(6) of the Act does not apply to commodity rates and that for that reason the Commission's decision was properly set aside, but that there is no need to decide any question concerning value of service as an element of present day rate-making. This was the course followed with respect to a similar question in the *New Haven* case, *supra*, at p. 761.⁴⁴

44. Several factual matters in the Government's discussion concerning value of service deserve comment:

1. While the Government says that a railroad cannot justify a reduction of "all its rates" merely by demonstrating that the reduction is competitively required by some, the fact is that the *New Haven* has by no means reduced all of its rates, not even those between New

II.

REPLY TO THE BRIEF OF APPELLANTS, ALL STATES FREIGHT, INC., ET AL.

Much of what is said in Appellants' brief has already been answered in the foregoing reply to the Government's brief and this will not be repeated here.

A. Reply to Appellants' Contention That the Court Below "Erroneously Reversed Commission for Refusing to Modify Statute."

Under this point appellants first argue that the lower court considered § 1(6) significant only in a maximum rate case. More accurately, the Court considered it to be significant only with respect to classifications used in connection with class rates which, with rare exceptions, are the maximum rates applicable in the tariffs. If a class rate actually applies for the transportation of a given article and the classification of that article should be so lowered that the result would be charges below cost, for example, then the classification could be found unreasonable in violation of § 1(6) and raised by the Commission's exercise of its powers under § 15(1). This is the true minimum rate situation, as applied to classification. It was not before the court and the court, of course, did not deal with it.

England points and Chicago and St. Louis, to which the all-commodity rates apply;

2. Senator Wheeler's comments quoted on p. 25 of the Government's brief, would appear to be contrary to the subsequently enacted § 15a(3), as interpreted in *I.C.C. v. N.Y., N.H. & H.R. Co.*, 272 U.S. 761, especially at p. 737;

3. The Hoch-Smith Resolution required an investigation of rates which was held and concluded many years ago. It imposes no further requirements.

4. In the footnote on p. 30 of the Government's brief it is indicated that the New Haven no longer has obstacles to the rendition of a full T.O.F.C. service. This is contrary to the evidence (R. 332-333).

Appellants' contention that the court below reversed the Commission for "refusing to modify" the statute is grounded on the court's statement that the Commission feared that approval of these rates would be legislation on its part, but that having permitted exceptional rates (i.e. rates not subject to the classification, which was built on "classification principles") to the point that all but a small fraction of the traffic now moves on non-class rates, it is "strange to find it boggling at this final step of so little effect on traffic actually moving under class rates". But the court did not say that to approve these rates would constitute legislation, changing the requirement of § 1(6). On the contrary, it referred to what the Commission "now claims" was the original meaning and purpose of § 1(6) but stated that "... we do not agree that these rates are or ever were a violation of the language or intent of section 1(6). Commodity rates are sufficiently policed under sections 1(5); 2; 3(1); and 15a(3)" (R. 44).

The following miscellaneous matters appearing under Appellants' argument Point A may be briefly noted:

In the last paragraph on p. 15 of their brief, Appellants say that § 1(6) requires carriers to establish and enforce just and reasonable classifications of property "and further requires that rates for the transportation of property be made with reference to such classifications." It is not correct to say that the statute requires that rates be made with reference to such classification. § 1(6) requires just and reasonable classifications of property with reference to which rates "are or may be made or prescribed" If rates are made or prescribed with reference to a classification, it must be a reasonable classification. The language of the statute and its plain meaning is thus significantly different from Appellants' paraphrase and from the meaning attributed to the section both by the Appellants and the Government throughout their respective briefs.

Continuing their analysis based upon this erroneous reading of the statute, Appellants say (15-16) that the obvi-

ous significance of the requirement of § 1(6), as they paraphrase it, is that "all rates must bear a reasonable and proper relationship to each other, and the Commission, in the evaluation of any particular rate proposal, not only may but also must consider the impact of that proposal upon the total rate structure of the carriers." To the same effect, the Appellants state on p. 19 that the Commission recognized that the Act "requires differential pricing of transportation to reflect the almost infinite variation between and among the articles and commodities which are transported in interstate commerce." The crushing burden which is thus suggested for the Commission is one which it has never assumed. As it stated in the *Pacific Coast* case, 248 I.C.C. 73, at pp. 86-87, "We have . . . never required commodity rates to conform to the ratings of the classification." Tariff schedules carrying literally thousands of rates are filed with the Commission day in and day out. As to the vast majority of them, no examination whatever is made by the Commission. For example, the Commission's 77th Annual Report (for the year ended June 30, 1963, the latest available) shows that during the year embraced by the report "186,633 publications containing newly established or changed" rates and fares were filed with the Commission (p. 57). But only 1912 rate adjustments were suspended, after which a total of 412 investigation and suspension proceedings were discontinued when carriers cancelled tariffs which they did not attempt to justify and, independent of suspension, only 155 investigation proceedings with respect to the tariffs were instituted (pp. 59, 60 and 63). It would be an entirely false impression, therefore, to believe that the Commission has made it a practice to see to it that all the rates that are used in transporting all varieties of articles are properly classified, one in relation to the other.

It is stated at the bottom of p. 19 of Appellants' brief that if the Commission has the power to require the railroads to transport a given segment of traffic at less than

cost, it must likewise have the power to require the railroads to transport traffic at rates substantially in excess of costs and that that is why § 1(6) makes it the duty of all common carriers to establish reasonable classifications. Whatever power is needed by the Commission to require increases in rates, or to arrest reductions, in proper circumstances, the Commission possesses and has exercised without reference to § 1(6).⁴⁵ This power exists by virtue of § 1 in conjunction with § 15a and the minimum rate power given by § 15(1).

The statements on pp. 19 and 20 of Appellants' brief which attribute to the discrimination and undue prejudice requirements of § 2 and § 3 the purpose of giving the Commission the power to require railroads to carry traffic at rates substantially in excess of costs, when the plain purpose of these historic provisions to guard against discrimination is universally known, indicates how extreme is the position to which the Appellants have been driven in this matter.

B. Reply to Appellants' Point B That the Court Below Misinterpreted the Commission's Decision.

Most of what is said under this point in Appellants' brief has been answered in our reply to the Government's brief.

On p. 26 Appellants state that under the holding of the court below the Commission is powerless to regulate transportation rate structures as a whole and to accomplish the goals of regulation embodied in the Act and the National Transportation Policy. The decisions cited in footnote 45 show that this is not true. So also does this Court's decision in the *New Haven* case, *supra*.

45. See, e.g., *U.S. v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 294 U.S. 499 (1935) and *Youngstown Sheet & Tube Co. v. U.S.*, 295 U.S. 476 (1935).

C. Reply to Appellants' Point C That the Decision Below Rests Upon a Disregard of Facts Found by the Commission.

Appellants' contention here is that the Commission found that under the considered rates the New Haven, in a certain period, transported 4 million pounds more freight "than it would have handled" in the absence of the proposed rates, for additional gross revenue of only \$129.00. From this Appellants argue that the "unchallenged findings of the Commission were that the considered all-freight rates will reduce rather than increase the net revenues of the proponent railroads . . . constituting thereby the very type of destructive competitive device which was condemned by the Supreme Court in" the *New Haven* case. As pointed out in the Government's brief, the Commission drew no conclusion of any kind from the figures quoted "not even the conclusion that the rates have resulted in a net loss of revenue during the period of their use" (Government brief, p. 33). Moreover, the truckers' contention completely overlooks the fact that the purpose of the rates was not only to attempt to regain traffic for the New Haven but to prevent further diversion of traffic which it still had at the time the rates were put into effect but which it was in grave danger of losing to its competitors (R. 140).

In connection with this matter it should be noted that the tabulation on p. 10 of Appellants' Brief purporting to show costs and contributions above out-of-pocket costs are computations of Appellants alone; no such findings were made by the Commission.

It may be noted, parenthetically, that in the Government's discussion of the destructive competitive practice point on pages 32 and 33 of its brief it is stated that the Commission's condemnation of the rates rested on the ground that they disregarded classification principles and, as an adjunct to that conclusion, "would undermine the New Haven's rate structure . . .". But the Commission did not identify whether the rate structure was that of the New Haven (a rate structure under which tremendous

amounts of their traffic have been driven to the highways) or the rate structure of the trucks which, under § 15a(3), is not to be the basis for condemning rail rates, *New Automobiles in Interstate Commerce*, 259 I.C.C. 475, 538, and *New Haven* case, *supra*, at p. 757. Moreover, the Commission simply assumed that the rate structure was reasonable. It did not consider and make findings to support this ultimate conclusion. Such findings would have been essential; *Milwaukee* case, *supra* (note 45), at p. 509.

Appellants also contend under their Point C that the rates in question do not present issues under § 15a(3) because "their primary genesis lies in an attempt by the New Haven to meet the trailer-on-flatcar competition of other railroads." The provisions and prohibitions of § 15a(3) apply "In a proceeding involving competition between carriers of different modes of transportation subject to the Act" This is such a proceeding. The purpose of the rates involved was to curtail diversion of traffic to motor carriers and to recapture traffic lost to them, as well as to compete with T.O.F.C. service of other railroads (R. 140). The alignment of the parties before the Commission was simply motor carriers against railroads. Indeed the Appellants point out on p. 9 of their brief that the railroads having TOFC service competition with the New Haven were parties to the proceedings before the Commission, Plaintiffs in the court below and are Appellees before this Court "in defense of the rates condemned by the Commission."⁴⁶

D. Reply to Appellants' Point D That the Court Below Has Usurped Congressional Prerogatives.

It is argued here that the basis for the court's declaration that the case should not have been decided under § 1(6)

46. These railroads, which published rates competitive with those of the New Haven, could not accept the far-reaching implications of what they regard as the fundamental errors of the Commission's report, particularly its new construction of § 1(6).

is the theory that economic circumstances are different than when § 1(6) was enacted. This is not correct. The court held that § 1(6) never was intended to apply to rates such as those involved, but had application to classifications used in connection with class rates. The same answer may be made to the statement at the bottom of p. 28 of Appellants' brief that it is beyond the authority of the court below to declare that the standards of § 1(6) may be disregarded because a rate proposal does not appear to the court to violate the provisions of §§ 1(5), 2, 3, and 15a(3).

CONCLUSION.

The judgment of the District Court should be affirmed.

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